Appendix A

Decision of the California Court of Appeal
5th Appellate District

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

BETH MAE HART, Plaintiff and Respondent, v. ROBERT HART, Individually and as Trustee, etc., Defendant and Appellant.	F086566 (Super. Ct. No. VCU286706) **OPINION**

APPEAL from a judgment of the Superior Court of Tulare County. Bret D. Hillman, Judge.

Robert Hart, in pro. per., for Defendant and Appellant.

Williams, Brodersen, Pritchett & Ruiz and Steven R. Williams for Plaintiff and Respondent.

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This is an appeal from an order granting a motion to amend a judgment that added a new judgment debtor. Appellant and defendant Robert Hart (appellant) contends that the trial court erred by granting respondent and plaintiff Beth Mae Hart's (respondent) motion to add "Robert Hart as trustee" of two trusts to the judgment. Specifically, Appellant avers the court erred by: (1) relying on rulings and findings from a separate unrelated divorce proceeding to apply the alter ego doctrine; and (2) violated trust law to find a unity of interests between Appellant and Robert Hart as trustee. We affirm.

PROCEDURAL BACKGROUND

On April 15, 2021, respondent filed suit against appellant and his now former wife Elizabeth "Lilly" Hart (Lilly) (collectively "the Harts"). Respondent alleged that appellant and Lilly had unlawfully provided her with a usurious loan.

In June 2022, a trial was conducted, and the jury found in favor of respondent on her claim of a usurious loan. In part, the jury found that respondent paid approximately $27,000 in interest on the usurious loan, which was credited against the principal. The court subsequently awarded respondent approximately $70,000 in attorney fees.

On March 3, 2023, respondent filed a motion to amend the judgment to add codebtors. The motion sought to add appellant in his capacity as a trustee of the Old Oak Holdings (OOH) trust and in his capacity as a trustee for the North Fork Assets (NFA) trust. Respondent argued that "Robert Hart as trustee" for the two trusts was the alter ego of appellant.

On March 27, 2023, appellant filed a verified opposition to the motion to amend judgment. In connection with appellant's opposition, a declaration by appellant's son Jason Hart (Jason) was filed on April 4, 2023. Jason declared that he was a beneficiary of the NFA, OOH, and Cedar Grove Holdings (CGH) trusts, which were established by his grandmother, and that appellant was not the alter ego of the trusts.

On May 12, 2023, respondent filed an amended motion to amend the judgment to add codebtors. The motion sought to add appellant in his capacity as a trustee for the

OOH trust and in his capacity as a trustee for the CGH trust. Respondent argued that "Robert Hart as trustee" of these two trusts was the alter ego of appellant.

On May 29, 2023, appellant filed a verified opposition to respondent's amended motion.

On June 27, 2023, the trial court held a hearing on the motion to amend judgment. The court granted respondent's motion.

On June 30, 2023, the clerk issued a new abstract of judgment. Two additional defendants were added to the judgment: the NFA trust and the CGH trust.

On July 18, 2023, appellant appealed the trial court's order amending the judgment.

FACTUAL BACKGROUND

The Ketter Trusts

Sometime prior to the events of this appeal, Appellant's mother Beverley Jean Ketter created the CGH, OOH, and NFA trusts. Jason is the beneficiary, and the Harts are cotrustees, of each of the three trusts. The three trusts each have a single parcel of real property as an asset. The CGH trust has a parcel known as the "Dry Creek Property," which was acquired in November 2019; the OOH trust has a parcel known as the "Three Rivers Property," which was acquired in January 2007; and the NFA trust has a parcel known as the "Dahlem Property," which was acquired in December 2007.

Loan to Respondent & Corresponding Lawsuit

In March 2016, the Harts loaned respondent $29,000 to stop a foreclosure. The interest rate charged was 1.5 percent per month, or 18 percent annually, for a period of five years.

In March 2018, respondent's attorney informed appellant that the loan violated the California Constitution's provision against usurious loans. The Harts responded by demanding that respondent's lawyer prove that the private loan was subject to the California Constitution. Respondent's lawyer did not reply.

In February 2021, respondent sent appellant a series of checks related to the loan. Appellant did not cash the checks, but subsequently did offer to retroactively reduce the interest from 18 percent per year to 10 percent per year.

In April 2021, respondent brought suit against the Harts. Respondent prevailed at trial, and a judgment in her favor was entered on June 3, 2022.

Divorce Proceedings[1]

Appellant and Lilly divorced after the trial on respondent's usury claim. Relative to this appeal, there are several important aspects of the divorce proceedings.

Lilly's Request for Property Control

On February 15, 2022, Lilly filed a request for a court order that would place her in control of the Dry Creek Property. In support of this request, Lilly declared in part that this property was purchased by her and appellant using community property funds from her work as a dance instructor and appellant's contracting and home inspection business. The Dry Creek Property was used as a profitable AirBNB rental since its acquisition in 2019 and was their main source of income. Lilly was concerned about losing the

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[1] Pursuant to Evidence Code sections 455 and 459, we gave the parties notice of, and an opportunity to object to, our intention to take judicial notice of appellant's trial brief, Lilly's trial brief, and three documents submitted in connection with Lilly's "Request for Property Control," all of which are part of the record in *In re Marriage of Hart*, case No. F086051. Appellant timely filed objections in which he argued that we may not take judicial notice of facts in the record or consider settlement related information for the purposes of assessing the trial court's alter ego finding. However, we are taking judicial notice of the existence of the documents and not treating factual assertions as true, (*People v. Franklin* (2016) 63 Cal.4th 261, 280; *In re Vicks* (2013) 56 Cal.4th 274, 314), and the documents at issue were not a part of any settlement proceeding and they are not being considered for an improper settlement related purpose under Evidence Code sections 1152 and 1154. (*Hasler v. Howard* (2004) 120 Cal.App.4th 1023, 1026.) Therefore, we overrule Appellants' objections and take judicial notice of these appellate court records. (Evid. Code, §§ 452, 459; *Kinney v. City of Corona* (2023) 99 Cal.App.5th 1, 13, fn. 6.)

AirBNB income and that appellant was incapable of running the property as an AirBNB rental.

On March 4, 2022, appellant filed an opposing declaration. In part, appellant declared a family trust owned the Dahlem Property and a family trust owned the Dry Creek Property. Appellant also declared that "all real property is owned by family trusts and no real property are marital assets." Appellant further declared that all real estate was purchased by trust assets that were themselves acquired through smart real estate investments by the family trusts. Appellant asserted that "[a]ll real property acquired during our marriage is owned by family trusts," and that the real properties "have never been marital assets." Appellant declared that he played a key role in the property's success as an AirBNB rental and that the income from the rental was a trust asset but did not deny that the rental income was their main source of income.

On March 22, 2022, Lilly filed a reply declaration that in part identified a number of ways in which the CGH trust failed to comply with the California Probate Code. Lilly also declared that Beverly Ketter was destitute and contributed nothing towards the acquisition of any real estate. Lilly declared that the true settlors of the CGH trust were the Harts and all assets held by the CGH trust were community property.

Appellant's Trial Brief

On December 2, 2022, appellant filed a trial brief in preparation for a division of property hearing. In part, the trial brief stated that he and Lilly were cotrustees of multiple family trusts. Under a section entitled "Settled Issues," appellant stated that he would resign as cotrustee of the NFA trust, Lilly would be the sole trustee of the NFA trust, Lily would resign from the CGH trust, and appellant would be the sole trustee of the CGH trust. Under a section entitled "Issues To Be Litigated At Trial," appellant identified the following issues: (1) the worth and equal split of a trust asset, the Three Rivers Property owned by the OOH trust, in which the Harts were cotrustees; (2) the equal split of the value of the Dahlem Property owned by the NFA, in which the Harts

were cotrustees; and (3) the equal split of the value of the Dry Creek Property owned by the CGH trust, in which the Harts were cotrustees. Finally, under a section entitled "[Appellant's] Proposal of Resolution of Issues," appellant addressed the Dahlem and Dry Creek Properties. With respect to the Dahlem property, appellant proposed that he would resign as cotrustee of the NFA trust, Lilly would be the sole trustee, and Lilly would have the right to "transfer assets into other trusts or name different beneficiaries if desired," and appellant would no longer have any rights to the trust or trust property. With respect to the Dry Creek Property, appellant proposed that Lilly would resign as the cotrustee of the CGH trust, appellant would be the sole trustee, and appellant would have the right to "transfer assets into other trusts or name different beneficiaries if desired," and Lilly would no longer have any rights to the trust or trust property.

Lily's Trial Brief

Lilly filed a trial brief on December 6, 2022. In part, Lilly represented that the parties had placed a stipulation on the record in March 2022 regarding the real properties at issue. The stipulation represented that the Dahlem Property was confirmed to Lilly, the Dry Creek Property was confirmed to appellant, and the Three Rivers Property would be sold with the proceeds divided and equalized per a final division. Under a section entitled "Community Property Assets and Debts," Lilly's brief identified: the Dahlem Property and noted that it was confirmed to her, the Dry Creek Property and noted that it was confirmed to appellant, and the Three Rivers Property and noted that the Harts had agreed to sell the property and divide the proceeds.

Final Division and Distribution of Property Hearing

On December 16, 2022, the divorce court held a recorded hearing regarding the division and distribution of the Harts' marital property. The distribution hearing appears to have been preceded by five days of argument and evidence. At the distribution hearing, the court stated that it would "make findings on the record." The court noted that the case was difficult because the Harts chose to conduct almost all of their financial

affairs outside the "traditional banking and taxation system." The court noted that the Harts both listed "unknown" as the last date they filed tax returns and operated "their businesses through a series of opaque trusts – we've heard testimony about that – and holding their assets and vehicles in trusts so that their names weren't on them." The court noted that Lilly said the "scheme" was utterly fraudulent, while appellant indicated it was because they did not trust banks, but it was "pretty clear to the [c]ourt that the primary function here is to avoid federal and state taxation." The court also noted an unknown "real property transfer" that could have been, but was not, done as a "1031 exchange." Similarly, at another point in the hearing, the court explained that it "found essentially that the parties were operating the trusts together as a going community scheme ...." The court further noted that "in the past few years," the Harts "primarily gained income from AirBNB rentals," and they "have a fair amount of expertise" with respect to AirBNB rentals.

After discussing money that had been stored in floor safes, the divorce court turned to the Dahlem, Dry Creek, and Three Rivers Properties. The court accepted an appraisal value of $825,000 for the Dahlem Property and an appraisal value of $690,000 for the Dry Creek Property. The court noted that it was "agreed that [the Three Rivers Property] will be listed for sale. And the equalization can be made out of that [sale]."

At one point, appellant asked about equalization and stated, "[t]here's a $135,000 difference between the price of my house and her house." The divorce court responded that the equalization payment would address the difference between the valuations. The following exchange regarding the CGH and NFA trusts then occurred:

"[Appellant]: I would suggest that she resigns from [CGH], I resign from [NFA] that owns Dahlem. [CGH] owns Dry Creek. If she signs and notarizes a document resigning as the trustee from [CGH] and I resign from [NFA], she will ....

"THE COURT: That makes sense.

"[Appellant]: ... she will become controlling trustee of that property, and she can do whatever she wants with it, if she wants to put it in her name or whatever. But I continue, you know ...

"THE COURT: "Basically, yes, you each need to be in a position where you control solely the homes you're awarded here. [Lilly] is getting the Dahlem property, and you're getting the Dry Creek property.

"[Appellant]: "Right, but we have to have legal documents so that if somebody wants to sell the property that they're totally in control and they don't need the other party ...

"THE COURT: "You should do that, yes.

"[Appellant]: "So would you order that ...

"THE COURT: "You know, I think the trusts were a subterfuge. I'm not going to make orders about the trusts. If the properties are held in the trusts and you need to resign, that's something you need to do."

In the formal judgment, the trial court awarded the Dahlem Property to Lilly as her sole and separate property. The trial court awarded the Dry Creek Property to appellant as his sole and separate property. The Harts were ordered to split the proceeds from the sale of the Three Rivers Property.

Order Amending Judgment in Usury Trial

In May 2023, respondent filed a motion and an amended motion to amend the judgment to add as a judgment debtor "Robert Hart as trustee" of the NFA, OOH, and CGH trusts.

On June 27, 2023, the trial court issued an order that granted respondent's motion to amend. After finding that appellant was the same person as "Robert Hart as trustee" and thus, had the opportunity to litigate the dispute with respondent, the court held:

> "Further, where 'it's entirely reasonable to ask whether a trustee is the alter ego of a defendant who made a transfer into [the] trust,' it seems equally reasonable for the Court to answer such a question in the affirmative when

the Defendant and trustee of the trusts at issue are one in the same. Some of the property held in trust where Defendant Robert Hart is the trustee that may be subject to the Judgment further were divided by this Court in the dissolution matter and thus appears to be an asset of Defendant Robert Hart, which was held in the trusts. Here, the Court will exercise '... the greatest liberality' in permitting the Judgment to be amended to add an alter ego of Defendant Robert Hart. [Citation omitted]

"In his response, [Appellant] argues that although he is a trustee of these trusts, the trusts predated this dispute and do nothing but hold property for the beneficiaries. He does not name the beneficiaries. The judgment of dissolution in the Hart dissolution does not reference the trusts as viable entities and divides the assets without reference to the trusts.

"The transcript attached to the judgment containing the court's findings after the dissolution trial discusses the court's reasoning in looking through the trusts and treating the trusts' assets as assets of the parties. The findings of the Court were as follows:

> "The Court: The parties chose to operate their businesses through a series of opaque trusts ... and holding their assets and vehicles in trusts so their names aren't on them. And the Court finds that there's been testimony that one party or the other was trying to do this. I think Mr. Hart probably came up with this scheme. However, I think it was a mutual agreement throughout the marriage and how these parties operated. ... Mrs. Hart now says they were utterly fraudulent. Mr. Hart says it was because they didn't trust banks. It's pretty clear to the Court that the primary function is to avoid federal and state taxation.

"A later section of the Court's findings contains the following exchange:

> "Mr. Hart: I would suggest that she resigns from [CGH], I resign from [NFA] that owns Dahlem. [CGH] owns Dry Creek .... If she signs and notarizes a document resigning as trustee from [CGH], and I resign from [NFA], she will ...
>
> "The Court: That makes sense.
>
> "Mr. Hart: ... she will become controlling trustee of that property, and she can do whatever she wants with it, if she wants to put it in her name or whatever ....

"After a further discussion of the trust properties, the Court said:

"The Court: You know, I think the trusts were subterfuge. I'm not going to make orders about the trusts. If the properties were held in trusts, and you need to resign, that's something you need to do.

"As the Court in the dissolution action essentially disregarded the trusts and divided the underlying assets, finding them to be a 'subterfuge,' they should not act as a liability shield in this action. Mr. Hart himself disregarded the trust when he engaged in the above discussion, noting that after the co-trustee resigned the [remaining] trustee could 'Do whatever she wants with it, if she wants to put it in her name or whatever ....' That evidence shows an understanding that the trusts are only a vehicle to hold the property that the parties to the dissolution saw as their community property. It would be unjust for these entities to shield property from a lawful judgment rendered by the jury in this action."

DISCUSSION

I. Parties' Arguments

Appellant argues that the alter ego finding is improper because there is no evidence that shows a sufficient unity of interests between himself and "Robert Hart as trustee." Appellant argues that the trial court's reliance on statements made by the divorce court during his divorce was inappropriate. Because the comments were not part of a judgment, and the issue of alter ego was not actually decided, Appellant contends that res judicata and collateral estoppel cannot apply. Finally, Appellant argues it is improper to find that "Robert Hart as trustee" is his alter ego when the trusts at issue were established by Appellant's mother for the benefit of her grandson Jason.

Respondent does not expressly address any of Appellant's points and instead submits on the existing appellate record.

II. Legal Standards

A. *Amending a Judgment*

California law provides that "[w]hen jurisdiction is [by law] conferred on a Court or judicial officer, all the means necessary to carry [that jurisdiction] into effect are also

given; and in the exercise of this jurisdiction, if the course of proceedings be not specifically pointed out by [statute], any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of [the Code of Civil Procedure]." (Code Civ. Proc., § 187; *Estrada v. Royalty Carpet Mills, Inc.* (2024) 15 Cal.5th 582, 603, fn. 14.) Through Code of Civil Procedure section 187, a court may amend a judgment to add a judgment debtor. (*JPV I L.P. v. Koetting* (2023) 88 Cal.App.5th 172, 188 (*JPV I*); *Wolf Metals Inc. v. Rand Pacific Sales Inc.* (2016) 4 Cal.App.5th 698, 703.) A judgment may be amended to add an "alter ego" as a debtor. (*JPV I*, at p. 189; *Favila v. Pasquarella* (2021) 65 Cal.App.5th 934, 942.) However, before an alter ego may be added to a judgment, due process requires that the additional judgment debtor controlled the litigation in its capacity as alter ego and was thus " ' "virtually represented" ' " in the lawsuit. (*Baize v. Eastridge Companies, LLC* (2006) 142 Cal.App.4th 293, 302; see also *Greenspan v. LADT LLC* (2010) 191 Cal.App.4th 486, 509 (*Greenspan*).) "In the interests of justice, the ' " ' "greatest liberality is to be encouraged" ' " ' in the allowance of amendments brought pursuant to Code of Civil Procedure section 187." (*Wells Fargo Bank, N.A. v. Weinberg* (2014) 227 Cal.App.4th 1, 7; see also *Favila*, at p. 937.) A trial court's decision to amend a judgment is reviewed for an abuse of discretion, while the factual findings necessary to the amendment decision are reviewed for substantial evidence. (*Favila*, at p. 943; see *Wolf Metals*, at p. 703.)

B. *Trusts*

A trust is not a legal entity, has no capacity to sue or be sued, and does not hold legal title to property. (See *Jo Redland Trust, U.A.D. 4-6-05 v. CIT Bank, N.A.* (2023) 92 Cal.App.5th 142, 156–157 (*Jo Redland Trust*); *Greenspan*, *supra*, 191 Cal.App.4th at pp. 521–522.) Rather, a "trust is a fiduciary relationship with respect to property in which the person holding legal title to the property – the trustee – has an equitable obligation to manage the property *for the benefit of another* – the beneficiary." (*Moeller*

v. Superior Court (1997) 16 Cal.4th 1124, 1134 (*Moeller*).) "When property is held in trust, ' "there is always a divided ownership of property," ' generally with the trustee holding legal title and the beneficiary holding equitable title." (*Boshernitsan v. Bach* (2021) 61 Cal.App.5th 883, 891; see also *Greenspan*, at p. 522.) In this regard, the beneficiaries' equitable estate is " ' "regarded as the real owner[s] of [that] property," ' " while the trustee's legal estate is " ' "no more than the shadow ... following the equitable estate ...." ' " (*Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, 1319 (*Steinhart*).) A trustee must always act solely in the beneficiaries' interest, and if the trustee violates this duty, he will be liable for breach of trust. (*Moeller*, at p. 1134.) The " 'proper procedure for one who wishes to ensure that trust property will be available to satisfy a judgment ... [is to] sue the trustee in his or her representative capacity.' " (*Greenspan*, at p. 522.)

C. *Alter Ego*

A judgment may be amended to add an "alter ego" as a debtor under 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.' " (*JPV I, supra*, 88 Cal.App.5th at p. 189.) While the alter ego doctrine generally applies to business organizations such as a corporation, it has been applied in the context of trusts. (*Greenspan, supra*, 191 Cal.App.4th at p. 521.) However, only the trustee of a trust may be an alter ego because the trust itself is not an entity and thus, incapable of being an alter ego. (*Id.* at p. 522.) There are two general requirements for establishing an alter ego: (1) there is such a unity of interests and ownership that the separate personalities of the individual and the entity no longer exist; and (2) an inequitable result will occur if the actions are considered to be those only of the entity. (*Blizzard Energy, Inc. v. Schaefers* (2021) 71 Cal.App.5th 832, 848–849 (*Blizzard Energy*); *Greenspan*, at pp. 511, 527–529.) Courts have identified at least 14 nonexclusive factors that may show a sufficient unity of

interests, but no single factor is necessarily determinative, and the ultimate determination depends on the unique facts and circumstances of the particular case. (*Greenspan*, at pp. 512–513; *Zoran Corp. v. Chen* (2010) 185 Cal.App.4th 799, 811–812.) The standards for finding an alter ego are high, and the doctrine is an extreme remedy that is to be used sparingly, reluctantly, and with caution. (*JPV I*, at p. 189.) A court's alter ego finding is reviewed for substantial evidence. (*Blizzard Energy, Inc.*, at p. 848.)

D. *Issue Preclusion*

The doctrine of issue preclusion or collateral estoppel " 'precludes relitigation of issues argued and decided in prior proceedings.' " (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 896; *Williams v. Doctors Medical Center of Modesto, Inc.* (2024) 100 Cal.App.5th 1117, 1131.) In order for issue preclusion to apply, the following elements must be met: (1) the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding; (2) the issue must have been actually litigated in the former proceeding; (3) the issue must have been necessarily decided in the former proceeding; (4) the decision in the former proceeding must be final and on the merits; and (5) the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. (*People v. Strong* (2022) 13 Cal.5th 698, 716; *Williams*, at pp. 1131–1132; see also *Samara v. Matar* (2018) 5 Cal.5th 322, 327.) The party asserting issue preclusion has the burden of establishing the above elements. (*Strong*, at p. 716; *Williams*, at p. 1132.) A lower court's application of issue preclusion is reviewed de novo. (*Williams*, at p. 1132.)

III. Analysis

The evidence cited by appellant indicates that the trusts at issue are irrevocable, the settlor of the trusts was appellant's mother, the trustees are appellant and Lilly, and Jason, not appellant, is the beneficiary. Appellant's opposition also indicates that the trusts each contain a single real property parcel. Although appellant asserts that the trusts

own the parcels, that is an inaccurate statement of California law because the trusts cannot own property. (*Jo Redland Trust*, *supra*, 91 Cal.App.5th at pp. 156–157; *Greenspan*, *supra*, 191 Cal.App.4th at pp. 521–522.) Further, under *Steinhart*, appellant, as trustee, merely holds legal title and is not the true owner of any of the trusts' assets.[2] (*Steinhart*, *supra*, 47 Cal.4th at p. 1319.) Instead, the equitable or true owner of the trusts' property is Jason, the beneficiary. (*Ibid.*) Therefore, appellant's evidence leads to the conclusion that adding "Robert Hart as trustee" to the judgment as a debtor permits respondent to satisfy the judgment against appellant with the property of Jason. (See *ibid.*; *Greenspan*, at p. 522.) This result is appropriate only if "Robert Hart as trustee" is in fact the alter ego of Appellant. (*Greenspan*, at pp. 497, 527–528 [remanding matter for the trial court to consider whether the trustee of an irrevocable trust established by the defendant for the benefit of his children was the alter ego of the defendant and thus, could be added as a judgment debtor to an amended judgment].)

Neither the trial court nor respondent pointed to any "external" evidence concerning the creation of the trusts, Jason's interactions with or expectations concerning the trusts, or appellant's actual practices, transactions, oversight, management, or operations concerning the trusts. Instead, respondent and the trial court relied on statements and findings made by the divorce court in order to show a unity of interest and thus, alter ego. Although neither respondent nor the trial court identified the basis for relying on the divorce court's findings and rulings, we believe that the trial court applied

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[2] We note that grant deeds recorded in the Tulare County Recorder's Office list the names of the trusts, e.g. "North Fork Assets," as the grantee of the real property parcels. However, the records include only the trusts' names and do not actually identify the trusts as "trusts" (or any particular type of entity for that matter). While listing the name of the trust puts a potential buyer on notice that an entity is involved in the ownership of the parcel, the fact remains that a trust is not a legal entity and cannot own real property. (*Greenspan*, *supra*, 191 Cal.App.4th at pp. 521–522.) Therefore, the trusts do not own the parcels despite the Tulare County records. (See *Steinhart*, *supra*, 47 Cal.4th at p. 1319; *Greenspan*, at pp. 521–522.)

issue preclusion from issues decided in the divorce proceeding.[3] Specifically, the trial court relied on the facts that the trusts were part of a community scheme and that the real property trust assets were actually community property used by the Harts for their own benefit. We conclude that the court did not err in its application of issue preclusion.

A. *Issue Preclusion*

1. Elements 4 and 5: Final Decision and Identical Party

Appellant was a party to the divorce proceedings, which fulfills the fifth element of collateral estoppel. Further, although there was an appeal pending with respect to the divorce court's final order of property distribution, that appeal did not raise any issues concerning the divorce court's actions or findings concerning any real property or the NFA, CGH, or OOH trusts. (See *In re Marriage of Hart* (May 21, 2024, F086051) [nonpub. opn.].) Because there was no appeal concerning the real property assets at issue, we conclude that the final order of distribution was a sufficiently final decision on the merits for purposes of issue preclusion regarding the real property trust assets. (See *Meridian Financial Servics., Inc. v. Phan* (2021) 67 Cal.App.5th 657, 688–689 [explaining that, unlike claim preclusion, a final decision for purposes of issue preclusion is one that is " 'sufficiently firm to be accorded conclusive effect,' " meaning that " 'the decision was adequately deliberated and firm, even if not final in the sense of forming a basis for a judgment already entered' "].)

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[3] Citing *De Cou v. Howell* (1923) 190 Cal. 741, appellant contends that it is improper to consider the statements of the divorce court. *De Cou* did hold that the "law is definitely settled in this state by a long line of decisions that the opinion of a trial court is not a part of the record and cannot be considered by an appellate court as indicating what operated upon its mind in coming to a conclusion as the ultimate facts of the case." (*Id.* at p. 751.) However, it is accepted that both oral and written opinions of a trial court may be considered to establish what matters were decided for purposes of issue preclusion. (See *McClain v. Rush* (1989) 216 Cal.App.3d 18, 28; *Carroll v. Puritan Leasing Co.* (1978) 77 Cal.App.3d 481, 491–492; *Tevis v. Beigel* (1957) 156 Cal.App.2d 8, 14–15.) Therefore, we consider the statements of the divorce court for purposes of issue preclusion.

2. Elements 2 and 3 – Actually Litigated and Necessarily Decided

The filings with respect to Lilly's request for property control show that the status of the trusts and of all real property assets were at issue. Lilly contended that the trusts were shams and that none of the real property assets were purchased or acquired by appellant's mother, rather, all trust assets were obtained with community property and treated as community property by the Harts. Appellant did not directly challenge Lilly's contention that his mother contributed nothing to the trusts, but he did maintain that the trusts were used for typical trust purposes and that none of the real property assets were marital assets, rather they were all nonmarital trust assets.

When Lilly and appellant filed their respective trial briefs, they had been discussing the real property assets. Lilly's trial brief stated that the Dahlem and Dry Creek Properties would be "confirmed" to the parties, while the Three Rivers property would be sold with the proceeds divided between herself and appellant. While appellant's trial brief stated that he and Lilly were cotrustees of multiple family trusts, his brief still agreed that resignations would lead to Lilly being solely in control of the Dahlem Property and appellant being solely in control of the Dry Creek Property. Importantly, appellant also stated that an outstanding issue was the worth and equal split the three real property "trust assets." Appellant also proposed that he and Lilly resign from the NFA and CGH trusts in such a manner that Lilly would have the ability to transfer the NFA's real property asset and assign new beneficiaries if she desired, and that he would have the ability to transfer CGH's real property asset and assign new beneficiaries if he desired.

The representations by appellant in his trial brief are significant because they are inconsistent with the proposition that the real property assets are strictly trust assets and not martial/community property. If the real property assets were not marital/community property, then there would be absolutely no need to split those assets, determine their value or worth, or attempt to split their values between Lilly and appellant. (See Fam.

Code, § 2550; *In re Marriage of Simmons* (2013) 215 Cal.App.4th 584, 593–594 (*Marriage of Simmons*).) Instead, the real property assets would remain in the trusts under the existent beneficial ownership of Jason and would not be subject to any court valuation, assessment of worth, or division. (See *Marriage of Simmons*, at pp. 593–594.)

Appellant's representations are also inconsistent with his role as a trustee for the benefit of Jason. A trustee places the interests of the beneficiary over his own. (*Moeller, supra*, 16 Cal.4th at p. 1134.) As a purported beneficial owner of each of the three real property parcels, it is not apparent how it is in Jason's best interest for the Three Rivers property to be sold and for the proceeds to be split between the Harts without Jason receiving any money. It is also unclear how it is in Jason's best interest for the Dahlem and Dry Creek Properties to be valued and awarded to Lilly and appellant as their sole and separate properties, thereby extinguishing Jason's equitable ownership interests. Further, if the trusts are irrevocable, it is not in Jason's best interests for appellant to suggest that Lilly and appellant would have the ability to transfer the Dahlem and Dry Creek Properties and change beneficiaries, which would also extinguish Jason's equitable ownership interests. Similarly, as recognized by the trial court, appellant's suggestion at the division of property hearing that Lilly could do whatever she wanted with the Dahlem Property is inconsistent with the property being a trust asset held for the benefit of Jason. (*Ibid.*)

The divorce court's property division order was generally in alignment with the parties' trial briefs. The divorce court ordered the Three Rivers Property sold and the proceeds divided between Lilly and Appellant, awarded the Dry Creek Property to appellant, and awarded the Dahlem Property to Lilly. The specific language of the division of property order was that the Dry Creek Property was appellant's "sole and separate property," and the Dahlem Property was Lilly's "sole and separate property." The plain meaning of this phraseology is that the Dahlem Property belongs completely to Lilly as her own property, and the Dry Creek Property belongs completely to appellant as

his own property. The order is wholly inconsistent with the notion that the real property assets were nonmarital trust assets being held and maintained for the benefit of Jason. Further, as part of the basis for the property distribution, the divorce court valued the Dahlem and Dry Creek Properties and used those valuations as part of the division and equalization process between Lilly and appellant. Again, if the Dahlem and Dry Creek Properties were not martial assets but were instead trust assets being held and maintained for the benefit of Jason as the existent equitable owner, then their valuations would not be part of the marital estate and would not be subject to division and equalization as between Lilly and appellant. (See *Marriage of Simmons*, *supra*, 215 Cal.App.4th at pp. 593–594.)

When the divorce court specifically addressed the trusts, it expressly found that the trusts were part of a community scheme, i.e. a scheme agreed to and implemented by both Lilly and appellant during marriage, to avoid tax liability on their own income. Further, when appellant suggested to the divorce court at the division of property hearing that Lilly as the sole trustee of NFA could sell or do whatever she wanted with the Dahlem Property, the divorce court refused to make orders regarding the trusts because they were a subterfuge, meaning that they were not actually used or managed in a way that was for the benefit of a beneficiary. In other words, the divorce court described and treated the trusts as a tool that was being used for the benefit of the community as part of a marital/community scheme.

Collectively, the filings in the divorce proceedings show that there was a dispute about the status of the trusts and the real property assets held by the trusts. The parties engaged in discussions, reached agreements on key issues, and made suggestions to the divorce court on other issues. Those agreements and suggestions are inconsistent with the proposition that the trusts' real property assets were being held and maintained for the benefit of Jason as the equitable owner. The divorce court reviewed the submissions of the parties and made orders consistent with the parties' agreements. The divorce court viewed the trusts as vehicles that were used for the benefit of the Harts and to avoid

paying taxes, refused to treat the trusts' assets as assets equitably owned by Jason as beneficiary, and made orders that were only consistent with the conclusion that the trusts' assets were marital/community assets. The filings of the parties and the findings and order of the divorce court therefore demonstrate that the nature of the trusts and the trusts' assets was actually litigated. Further, because the divorce court is required to divide community property between the spouses (Fam. Code, § 2550), it was necessary to determine how the Harts' treated the trusts and trusts' assets. If the Harts had not used the trusts to hold community property and as part of a community scheme for their own benefit, then the trusts' assets would be nonmarital/noncommunity property and not subject to division. Therefore, it was necessary for the divorce court to determine the nature and use of the trusts and the trusts' assets. Accordingly, the nature of the trusts and the proper characterization of the real property trust assets were necessarily decided and actually litigated in the divorce proceeding.

3. Element 1 – Identical Issues

In applying the alter ego doctrine, the trial court relied on the divorce court's findings and treatment of the trusts as part of a community scheme and the real property trust assets as community property (that was divided between appellant and Lilly) in finding a unity of interests. Therefore, the nature of the trusts and the trusts' assets were key issues in both this usury trial and the divorce proceeding.

4. Conclusion

Because all five elements of issue preclusion are met, appellant is estopped from contending that the real property assets of the NFA, CGH, and OOH trusts were not marital/community property or that the trusts at issue were not used as part of a community scheme for the benefit of the community.

B. *Alter Ego*

The divorce proceeding demonstrated that the Harts lived at the Dahlem Property and rented out the Dry Creek Property as a profitable AirBNB rental. Lilly's motion for

control of the Dry Creek Property alleged that the Harts lived off of the AirBNB rental income generated by the Dry Creek Property, and Appellant did not deny the assertion. The Harts used the trusts as part of a community scheme to avoid paying taxes on their income. Further, as martial/community properties, the Dahlem and Dry Creek Properties were assets that belonged to the Harts and inured to their benefit. (See William W. Bassett, Cal. Community Property Law, § 1:22 (2023–2024 ed.) ["The basic presumption of the community property system is that both husband and wife are equally owners of the community property ... regardless of contribution. ... Since 1975, husband and wife have had equality in the management and control of the community, a truly equal partnership"].) This means that, despite the existence of the trusts and Jason as a beneficiary, the trust properties were maintained by martial/community property assets, were used for the benefit and support of both Lilly and appellant, and were actually treated by Lilly and appellant as marital/community assets.

This is similar to the circumstances in *Greenspan* in which the defendant funded a trust for the benefit of his children, appointed a third-party trustee, and then controlled the actions of the trustee to use the trust assets for his own purposes and benefit. (*Greenspan, supra*, 191 Cal.App.4th at pp. 497, 527–528.) It is true that the *Greenspan* court did not remand the matter with instructions for the lower court to grant the motion to amend based on an alter ego theory. Instead, *Greenspan* remanded the matter for the lower court to reconsider the alter ego issue in light of evidence that had been wrongly excluded. Despite not ordering the lower court to grant the motion to amend, *Greenspan* strongly suggests that the regular use of trust assets by one who contributed or fully provided trust assets for that person's own interests, and acts in an apparent disregard of the beneficiary's interests, are factors that can strongly point to a unity of interests and thus, alter ego.

We recognize that alter ego is a doctrine that is to be applied with great caution. (*JPV I, supra*, 88 Cal.App.5th at p. 189.) Nevertheless, given the nature of the trust

assets as marital/community property, the use of the trust assets for the benefit of the Harts, and the divorce court's conclusion that the use of the trusts was part of a scheme to avoid tax liability, we conclude that substantial evidence supported the trial court's implicit finding that there was a unity of interests between appellant and "Robert Hart as trustee" and its express finding that "Robert Hart as trustee" is the alter ego of appellant. (*Blizzard Energy*, *supra*, 71 Cal.App.5th at p. 848.) Consequently, the court was well within its broad discretion to amend the judgment to include "Robert Hart as trustee" as judgment debtor. (*Favila v. Pasquarella*, *supra*, 65 Cal.App.5th at p. 943.)

DISPOSITION

The trial court's order amending judgment is affirmed. Respondent shall recover costs on appeal.

POOCHIGIAN, J.

WE CONCUR:

HILL, P. J.

LEVY, J.

Appendix B

Decision of the California Trial Court
Tulare County Superior Court

SUPERIOR COURT OF CALIFORNIA COUNTY OF TULARE	
Hart, Beth Mae Plaintiff/Petitioner, vs. **Hart, Robert** Defendant/Respondent.	Jud. Officer: **Bret Hillman** Clerk: **Nicole Renteria** Bailiff: **Randy Nash** CSR: **Danette Hendrix** Interpreter: Language:
Minutes: **(1) Continued Motion to Amend Judgment (2) Motion for Fees as to Collection of Judgment; and (3) Defendant Robert Hart's Motion to Set Aside/Vacate** Date: **June 27, 2023**	**Case No. VCU286706** **Department 07** Related Cases:

Appearances: ☐ No Appearances

☐ Party: _____
☐ Remote Appearance
☐ Party: _____
☐ Remote Appearance
☐ Party: _____
☐ Remote Appearance
☐ Other: _____
☐ Remote Appearance

☒ Attorney: Steven Williams for Plaintiff present
☐ Remote Appearance
☒ Attorney: Sean Fredin for Defendant, Robert Hart present via Court Call
☒ Remote Appearance
☒ Attorney: Fernando Garcia for Defendant, Elizabeth "Lilly" Hart present via Court Call.
☒ Remote Appearance

☐ Court makes interpreter findings on the record pursuant to GC 68561(g)/GC 68561(f)
☐ The Court noted that no court reporter was available for today's proceedings.

Motion: (1) Continued Motion to Amend Judgment (2) Motion for Fees as to Collection of Judgment; and (3) Defendant Robert Hart's Motion to Set Aside/Vacate

☒ Oral argument requested by Plaintiff and Defendant.

☒ Arguments made by Counsel heard by the Court.

ORDER: The Court adopts the Tentative Ruling as the Order of the Court as follows:

(1) To grant the motion to amend the judgment; to award $1,200 in fees and $184 costs as to the alter ego amendments; (2) to grant the motion and award $7,996.25 in fees and $2,029.50 in costs; (3) To deny the motion.

(1)

Facts

The Court continued this motion to amend the judgment in this matter to this date. The Court is in receipt of the amended pleadings as to the motion to amend the judgment.

Plaintiff, after a jury verdict in her favor and motion for attorneys' fees and costs, obtained judgment against Defendant Robert Hart, individually and as trustee of Diversified Management, a family trust, and against Defendant Diversified Management in the amount of $70,091.25 (the "Judgment.")

Plaintiff, in seeking to recover the Judgment, has discovered that Defendant Robert Hart is trustee of two additional trusts, Old Oak Holdings and North Fork Assets, as alter egos of Defendant Robert Hart in which he holds title to his former community, and now separate, property in Exeter and Badger.

Plaintiff now seeks to add Robert Hart, as trustee of Old Oak Holdings and as trustee of North Fork Assets, as debtors to the Judgment. North Fork Assets appears to hold title to the Exeter Property based on the 2008 grant deed (RJN – Ex 2.) Old Oak Holdings appears to hold title to real property located in Three Rivers (RJN – Ex. 4.)

Plaintiff indicates that she discovered this holding of title by Defendant Robert Hart via a judgment in his "domestic relations dispute" with disclosed the division of assets of Defendant Robert Hart and his former spouse Elizabeth Hart.

Counsel for Plaintiff indicates that "in seeking to enforce the judgment I discovered no real property assets in the name of [Defendant Robert Hart] which seemed odd as mention was made of his ownership interest in real property and his use of addresses in Exeter and Badger, California as places for service of pleadings." (Declaration of Williams ¶4.) Elizabeth Hart wife recorded three lis pendens from property, two of which tracked the addresses in Exeter and Badger utilized by Defendant Robert Hart. (Declaration of Williams ¶5.)

Defendant Robert Hart filed a late opposition to this motion, which the court considered. The court has also reviewed the objections filed on May 18, 2023 and May 23, 2023. These objections are very similar and essentially seek to reargue the entire case.

The amended pleadings indicate that Plaintiff seeks, specifically, to amend the judgment to include "judgment debtor's alter egos of Robert C. Hart, namely: Robert Coleman Hart, aka Robert Hart, as trustee of Cedar Grove Holdings dated 12-29-07 (Badger Property— APN 007-210-013) and as trustee of Old Oak Assets dated as of 12-29-07 (Three Rivers Property APN 067-070-034), as co-judgment debtors." (Amendment to Declaration of Williams ¶10)

In opposition, Defendant Robert Hart states that "the irrevocable Trusts named Old Oak Holdings and North Fork Assets have absolutely nothing to do with this lawsuit and never has" and that "The assets in said trusts do not belong to the Defendants and lawfully belong to the Beneficiaries of said trusts. The Trusts are lawful irrevocable trusts created to build assets for the Beneficiaries at the contractual demand of the Grantor of the trust and do what all trusts are created to do, and nothing more. The Trusts were created by the Grantor, Beverly Jean Ketter/Hart. Robert and Elizabeth Hart were appointed Co-Trustees of said irrevocable trusts by said Grantor."

Defendant Robert Hart also argues there is no evidence supporting the underlying judgment and that the evidence received by Judge Hillman in the family law matter is irrelevant to establishing the trusts at issue here as alter egos of Defendant Robert Hart.

Judicial Notice

Plaintiff requests that this Court take judicial notice of the judgment in the dissolution of marriage action between Elizabeth Hart and Robert Hart, VFL290175 (Exhibit 1) the grant deeds in favor of North Fork Assets and Old Oak Holdings (Exhibits 2 and 4) and the lis pendens filed by Elizabeth Hart in connection with that dissolution of marriage action (Exhibits 3 and 5) The Court will also take judicial notice of the Court's findings recited on the record at the conclusion of that dissolution trial on December 16, 2022.

Under Evidence Code section 452(d), judicial notice may be taken of records of any court of this state or any court of record of the United States or of any state of the United States. The court may take judicial notice of any court orders, findings of facts and conclusions of law, and judgments within court records. (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882.) "[W]hile courts are free to take judicial notice of the existence of each document in a court file, including the truth of results reached, they may not take judicial notice of the truth of hearsay statements in decisions and court files." (*Id.*)

Therefore, the Court takes judicial notice of Exhibit 1 – the transcript constituting the judgment in VFL290175 and Exhibits 3 and 5, the lis pendens filed in that case, to the extent permissible.

Evidence Code sections 452(c) and (h), respectively, permit a court, in its discretion, to take judicial notice of the existence and recordation of real property records when the authenticity of the documents is not challenged. (See *Alfaro v. Community Housing Improvement System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, 1367, fn. 8, 1382)Further, "a court may take judicial notice of the fact of a document's recordation, the date the document was recorded and executed, the parties to the transaction reflected in a recorded document, and the document's legally operative language, assuming there is no genuine dispute regarding the document's authenticity. From this, the court may deduce and rely upon the legal effect of the recorded document, when that effect is clear from its face." (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 755.)

The Court, therefore, takes judicial notice of Exhibits 2 and 4 to the extent permissible.

Authority and Analysis

Pursuant to Code of Civil Procedure section 187, "[w]hen 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; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this Code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this Code." (Code Civ. Proc § 187.) "Under Code of Civil Procedure section 187 ... the trial court is authorized to amend a judgment to add additional judgment debtors." (*Carolina Casualty Ins. Co. v. L.M. Ross Law Group, LLP* (2012) 212 Cal.App.4th 1181, 1188.)

"Amending a judgment to add an alter ego of an original judgment debtor 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." (*Highland Springs Conf. & Training Ctr. v. City of Banning* (2016) 244 Cal.App.4th 267, 280.) "The court is not required to hold an evidentiary hearing on a motion to amend a judgment, but may rule on the motion based solely on declarations and other written evidence." (*Id.*)

Plaintiff expressly seeks to amend the judgment to add the alter egos, Robert Hart as trustees of both North Fork Assets and Old Oak Holdings, citing to *Greenspan v. LADT LLC* (2010) 191 Cal. App. 4th 486. The Court in Greenspan expressly permitted the application of the alter ego doctrine to a trustee stating:

"But '[w]hile applying alter ego doctrine to trusts is conceptually unsound, applying the doctrine to trustees is a different proposition. Trustees are real persons, either natural or artificial, and, as a conceptual matter, it's entirely reasonable to ask whether a trustee is the alter ego of a defendant who made a transfer into [the] trust. Alter-ego doctrine can therefore provide a viable legal theory for creditors vis-à-vis trustees.' [citation omitted]." (Id. at 522.)

Therefore, if Robert Hart, as trustee of North Fork Assets and Old Oak Holdings, can be determined to be the alter ego of Robert Hart, individually, or Robert Hart, as trustee of Diversified, the judgment is properly applied to Robert Hart, Trustee of either North Fork Assets or Old Oak Holdings.

"The ability under section 187 to amend a judgment to add a defendant, thereby imposing liability on the new defendant without trial, requires *both* (1) that the new party be the alter ego of the old party *and* (2) that the new party had controlled the litigation, thereby having had the opportunity to litigate, in order to satisfy due process concerns. The due process considerations are in addition to, *not in lieu of,* the threshold alter ego issues." (*Triplett v. Farmers Ins. Exchange* (1994) 24 Cal.App. 4th 1415, 1421; *see also LSREF2 Clover Property 4, LLC v. Festival Retail Fund 1, LP* (2016) 3 Cal. App. 5th 1067, 1081.)

"Alter ego is an extreme remedy, sparingly used. [Citation.] The standards for the application of alter ego principles are high, and the imposition of alter ego liability is to be exercised reluctantly and cautiously." [Citation.] Still, the greatest liberality is to be encouraged in allowing judgments to be amended to add the "real defendant," or alter ego of the original judgment debtor, in order to see that justice is done." (*Highland Springs Conf. & Training Ctr., supra,* 244 Cal.App. 4th at 280)

"In California, two conditions must be met before the alter ego doctrine will be invoked. First, there must be such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist. Second, there must be an inequitable result if the acts in question are treated as those of the corporation alone." (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 538.) As noted above "Trustees are real persons, either natural or artificial.." and in this case, the trustee and the Defendant are one in the same natural person. (*Greenspan, supra,* 191 Cal. App. 4th at 522.)
]

Applying the above rules in the context of a trustee, the Court notes that there cannot be a dispute that Robert Hart, as an individual, is the same person as Robert Hart, trustee of North Fork Assets and Old Oak Holdings, and therefore had the opportunity to litigate the underlying matter. Further, where "it's entirely reasonable to ask whether a trustee is the alter ego of a defendant who made a transfer into [the] trust" it seems equally reasonable for the Court to answer such a question in the affirmative when the Defendant and trustee of the trusts at issue are one in the same. Some of the property held in trusts where Defendant Robert Hart is the trustee that may be subject to the Judgment further were divided by this Court in the dissolution matter and thus appears to be an asset of Defendant Robert Hart, which was held in the trusts. Here, the Court will exercise "...the greatest liberality" in permitting the Judgment to be amended to add an alter ego of Defendant Robert Hart. (*Highland Springs Conf. & Training Ctr., supra,* 244 Cal.App. 4th at 280.)

In his response, Robert Hart argues that although he is a trustee of these trusts, the trusts predated this dispute and do nothing but hold property for the beneficiaries. He does not name the beneficiaries. The judgment of dissolution in the Hart dissolution does not reference the trusts as viable entities and divides the assets without reference to the trusts.

The transcript attached to the judgment containing the court's findings after the dissolution trial discusses the court's reasoning in looking through the trusts and treating the trust assets as assets of the parties. The findings of the Court were as follows:

> The Court: The parties chose to operate their businesses through a series of opaque trusts...and holding their assets and vehicles in trusts so their names aren't on them.

> And the Court finds that there's been testimony that one party or the other was trying to do this. I think Mr. Hart probably came up with this scheme. However, I think it was a mutual agreement throughout the marriage and how these parties operated. ... Mrs. Hart now says they were utterly fraudulent. Mr. Hart says it was because they didn't trust banks. It's pretty clear to the Court that the primary function is to avoid federal and state taxation. (Transcript of Court's findings in Hart dissolution 12-16-22 P 3-4 L 16-26, 1-2)

A later section of the court's findings contains the following exchange:

> Mr. Hart: I would suggest that she resigns from Cedar Grove Holdings, I resign from North Fork Assets that owns Dahlem. Cedar Grove Holdings owns Dry Creek.... If she signs and notarizes a document resigning as trustee from Cedar Grove Holdings, and I resign from North Fork Assets, she will...
>
> The Court: That make sense.
>
> Mr. Hart: – she will become controlling trustee of that property, and she can do whatever she wants with it, if she wants to put it in her name or whatever.... (Transcript in Hart dissolution 12-16-22 P 21 L 10-20)

After a further discussion of the trust properties the Court said:

> The Court: You know, I think the trusts were a subterfuge. I'm not going to make orders about the trusts. If the properties were held in the trusts, and you need to resign, that's something you need to do. (Transcript in Hart dissolution 12-16-22 P 22 L. 5-9)

As the Court in the dissolution action essentially disregarded the trusts and divided the underlying assets, finding them to be a "subterfuge," they should not act as a liability shield in this action. Mr. Hart himself disregarded the trust when he engaged in the above discussion, noting that after the co-trustee resigned the remining trustee could, "Do whatever she wants with it, if she wants to put it in her name or whatever...." That evidences shows an understanding that the trusts are only a vehicle to hold the property that the parties to the dissolution saw as their community property. It would be unjust for these entities to shield property from a lawful judgment rendered by the jury in this action.

The Court grants the motion.

Attorneys' Fees

Within this motion to amend as to alter ego, Plaintiff seeks to recover attorneys' fees incurred in adding an additional judgment debtor and to categorize these as prejudgment fees instead of fees to enforce the judgment. In support, Plaintiff directs the Court to *Highland Springs Conference & Training Center v. City of Banning* (2019) 42 Cal.App.5th 416, 425-426:

> "Although the EJL does not define "enforcement", [citation] the EJL nowhere suggests that the filing and pursuit of an alter ego motion to amend a judgment to add an additional judgment debtor, under section 187, constitutes the enforcement of the judgment the movant seeks to amend. Section 187 "grants every court the power and authority to carry its jurisdiction into effect. [Citation.] This includes the authority to amend a judgment to add an alter ego of an original judgment debtor, and thereby make the additional judgment debtor liable on the judgment. [Citation.] Amending a judgment to add an alter ego of an original judgment debtor '"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.]"

Therefore, as to fees incurred amending a judgment to add an alter ego, such "...fee requests sought *prejudgment* fees...Thus, it was error to treat the fee requests as seeking postjudgment enforcement fees..." (*Id.* at 425.)

The *Highland Springs* court further noted:

> "...section 1021.5 was the only basis available to plaintiffs for claiming any fees incurred in pursuing the alter ego motion. Section 1021.5 allows the court, upon motion, to award attorney fees "*to a successful party* against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest ... ." (Italics added.)" (*Id.* at 426.)

The timing for the fee request for prejudgment fees is, according to the court in Highland Springs, governed by Rule 3.1702(b)(1) which states "A notice of motion to claim attorney's fees for services up to and including the rendition of judgment in the trial court—including attorney's fees on an appeal before the rendition of judgment in the trial court—must be served and filed within the time for filing a notice of appeal under rules 8.104 and 8.108 in an unlimited civil case..."
(Id. at 427)

Under Rule 3.1702(b)(1) then, this fee request is timely if served and filed before the earliest of

> **(A)** 60 days after the superior court clerk serves on the party filing the notice of appeal a document entitled "Notice of Entry" of judgment or a filed-endorsed copy of the judgment, showing the date either was served;
>
> **(B)** 60 days after the party filing the notice of appeal serves or is served by a party with a document entitled "Notice of Entry" of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service; or
>
> **(C)** 180 days after entry of judgment. (California Rule of Court, rule 8.104.)

Here, the Court has granted the alter ego amendment in this motion therefore starting the time under Rule 3.1702(b)(1) as set by Rule 8.104(a)(1)(C). (See *Highland Springs* at 472: ["...all of the fees plaintiffs incurred in pursuing their alter ego motion, including the fees plaintiffs incurred in appealing the initial order denying their alter ego motion in Highland Springs I, are prejudgment fees incurred **in obtaining the February 8, 2017, judgment granting the alter ego motion. Thus, the February 8, 2017, judgment is the basis for awarding plaintiffs prejudgment fees and costs incurred in successfully pursuing their alter ego motion under rule 3.1702(b)(1)** and section 1021.5."] (emphasis added.)

The Court, therefore, grants the motion. The Court has reviewed the April 4, 2023 declaration of Counsel Williams as to the fees incurred of $1,400 consisting of 4 hours at $350 per hour as to this motion and $184 in costs.

The Court, consistent with the rate applied below, reduces the hourly rate to $300.

The general rule is '[t]he relevant "community" is that where the court is located.' (*Altavion, Inc. v. Konica Minolta Systems Laboratory, Inc.* (2014) 226 Cal.App.4th 26, 71.)" (*Marshall v. Webster* (2020) 54 Cal.App.5th 275, 285.) "The experienced trial judge is the best judge of the value of professional services rendered in his court." (*PLCM, supra,* 22 Cal.4th at 1095.) Additionally, the determination of the value of the legal services is committed to the discretion of the trial court without necessity of expert testimony. (*Cordero-Sacks, v. Housing Authority* (2011) 200 Cal App 4th 1267, 1286.)

The Court does not reduce the hours as it finds no clear indication they are erroneous. (*Horsford v. Board of Trustees of Calif. State Univ.* (2005) 132 Cal. App. 4th 359, 395-397—verified time records entitled to credence absent clear indication they are erroneous.)

Therefore, the Court awards $1,384 in fees and costs.

(2)

Facts

Plaintiff, by way of separate motion, seeks the fees and costs incurred as to enforcement of the Judgment. Counsel provides itemized billing records indicating $7,996.25 in fees and $2,029.50 in costs at rates from $300 per hour to $135 per hour. Plaintiff seeks these fees pursuant to Code of Civil Procedure section 685.080(a) "because satisfaction for purposes of post-judgment motions requires payment in accordance with Code Civ. Proc. § 724.010(a); (*Wertheim LLC v. Currency Corp.* (2019) 35 Cal. App. 5th 1124, 1131— 1135)."

In opposition, Defendant Robert Hart cites to the "American rule" and Code of Civil Procedure section 1021, that parties pay their own fees. However, as expressly stated in section 1021: **"Except as attorney's fees are specifically provided for by statute**..." which is applicable in this matter.

Authority and Analysis

Wertheim, supra, states:

> "Pursuant to the Enforcement of Judgments Law (§ 680.010 et seq.), a judgment creditor may claim authorized costs incurred while enforcing a judgment, including authorized attorney fees (§§ 685.040, 685.090). Section 685.080 requires that a motion for such costs be made before the judgment is "satisfied in full." (§ 685.080, subd. (a).) The time limitation is ""to avoid a situation where a judgment debtor has paid off the entirety of what he [justifiably] believes to be his obligation in the entire case, only to be confronted later with a motion for yet more fees."" [citations omitted]" (Id. at 1133.)

Here, there has been no satisfaction of the Judgment in full. The motion is therefore timely.

The Court, therefore, turns to the reasonableness of the fee request.

The Court's analysis begins with the lodestar figure, based on the "careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case." (*Serrano v. Priest* (1977) 20 Cal.3d 25, 48.) "The reasonable hourly rate is that prevailing in the community for similar work." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 [internal citation omitted].) A reasonable hourly rate reflects the skill and experience of the lawyer, including any relevant areas of particular expertise, and the nature of the work performed. (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 433-434.) The reasonable market value of the attorney's services is the measure of a reasonable hourly rate. This standard applies regardless of whether the attorneys claiming fees charge nothing for their services, charge at below-market or discounted rates, represented the client on a straight contingent fee basis, or are in house counsel. (*PLCM Group v. Drexler, supra,* 22 Cal.4th at p. 1094.)

To determine reasonable attorney's fees, the court should consider the nature of the litigation, its difficulty, the amount involved, the skill required and employed in handling the matter, the attention given, the success of the attorney's efforts, the intricacies and importance of the litigation, the labor and necessity for skilled legal training and ability in trying the cause, and the time consumed. (*Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 659.) As to the reasonableness of the hours, "trial courts must carefully review attorney documentation of hours expended; 'padding' in the form of inefficient or duplicative efforts is not subject to compensation." (*Ketchum v. Moses, supra,* 24 Cal.4th at p. 1132.) "In determining a fee's reasonableness, the court may also consider whether the motion itself is reasonable, both in terms of (1) the amount of fees requested and (2) the credibility of the supporting evidence." (*Guillory v. Hill* (2019) 36 Cal.App.5th 802, 811.) The court may make a downward adjustment if the billing entries are vague, "blockbilled," or unnecessary. (*569 East County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 441.)

The general rule is '[t]he relevant "community" is that where the court is located.' (*Altavion, Inc. v. Konica Minolta Systems Laboratory, Inc.* (2014) 226 Cal.App.4th 26, 71.)" *(Marshall v. Webster* (2020) 54 Cal.App.5th 275, 285.) "The experienced trial judge is the best judge of the value of professional services rendered in his court." (*PLCM, supra,* 22 Cal.4th at 1095.) Additionally, the determination of the value of the legal services is committed to the discretion of the trial court without necessity of expert testimony. (*Cordero-Sacks, v. Housing Authority* (2011) 200 Cal App 4th 1267, 1286.)

The Court finds that the maximum rate charged here, $300, is a permissible hourly value of services in this community.

As to the number of hours and work completed, detailed time records are not required, though courts have expressed a preference for contemporaneous billing and an explanation of work. (*Raining Data Corp. v. Barrenechea* (2009) 175 Cal.App.4th 1363, 1375.) "Of course, the attorney's testimony must be based on the attorney's personal knowledge of the time spent and fees incurred. (Evid.Code, § 702, subd. (a) ['the testimony of a witness concerning a particular matter is inadmissible unless he has personal knowledge of the matter'].) Still, precise calculations are not required; fair approximations based on personal knowledge will suffice." (*Mardirossian & Associates, Inc. v. Ersoff* (2007) 153 Cal.App.4th 257, 269.) The starting point for the determination as to hours is the attorney's submitted time records. (*Horsford v. Board of Trustees of Calif. State Univ.* (2005) 132 Cal. App. 4th 359, 395-397—verified time records entitled to credence absent clear indication they are erroneous.)

The Court, upon review of the submitted itemized billing records, discovers no clear indication they are erroneous. "In challenging attorney fees as excessive because too many hours of work are claimed, it is the burden of the challenging party to point to the specific items challenged, with a sufficient argument and citations to the evidence. General arguments that fees claimed are excessive, duplicative, or unrelated do not suffice. Failure to raise specific challenges in the trial court forfeits the claim on appeal." (*Premier Medical Management Systems, Inc. v. California Ins. Guarantee Assn.* (2008) 163 Cal.App.4th 550, 564.)

Here, in opposition, Defendant Hart does not challenge specific items.

The Court, therefore, grants the motion.

(3)

Facts

Defendant Robert Hart, though unclear whether on his behalf individually or as trustee, moves the Court, post-judgment, to vacate or amend the judgment. The Court notes that Defendant Hart appears to have appealed both individually and as to Diversified Management, though this is somewhat unclear to the Court.

Defendant appears to attempt to relitigate a number of matters that were presented and decided at trial, despite having an active appeal. As noted by

Defendant moves under Code of Civil Procedure section 657 to vacate the judgment entered in this matter.

Plaintiff opposes the motion on the basis that the Court lacks jurisdiction as a result of Defendant's appeal under Code of Civil Procedure section 916. Further Plaintiff opposes the underlying basis for the motion as moot, as the Court has previously, determined the credits to the balance of the principal.

Authority and Analysis

To start, "[a] trial court retains jurisdiction to hear and determine a motion for a new trial after an appeal has been taken from the judgment."

(Hatfield v. Levy Bros. (1941) 18 Cal.2d 798, 807.)

A motion for new trial is a creature of statute; . . ." (*Neal v. Montgomery Elevator Co.* (1992) 7 Cal. App. 4th 1194, 1198.) The party intending to move for a new trial **must file with the clerk and serve upon each adverse party a notice of his intention to move for a new trial**, designating the grounds upon which the motion will be made under Code of Civil Procedure section 657 and whether the same will be made upon affidavits or the minutes of the court or both, either:

> (1) "after a decision is rendered and before the entry of judgment";
>
> (2) "within 15 days of the date of mailing notice of entry of judgment by the clerk of the court . . . , or service upon him or her by any party of written notice of entry of judgment, or within 180 days after the entry of judgment, whichever is earliest"; or
>
> (3) if another party files the first motion for new trial, "each other party shall have 15 days after the service of that notice upon him or her to file and serve a notice of intention to move for a new trial." (Code Civ. Proc § 659.)

These time limits are jurisdictional and cannot extended or waived by stipulation nor court order. (*Marriage of Herr* (2009) 174 Cal.App.4th 1463, 1469.) The motion, therefore, is untimely, as no notice of intent to move for new trial was filed in this matter.

The Court, therefore, denies the motion.

If no one requests oral argument, under Code of Civil Procedure section 1019.5(a) and California Rules of Court, rule 3.1312(a), no further written order is necessary. The minute order adopting this tentative ruling will become the order of the court and service by the clerk will constitute notice of the order.

☒ Clerk to provide notice to parties by mail.

Appendix C

Decision of the Supreme Court of California

Court of Appeal, Fifth Appellate District - No. F086566

S288152

IN THE SUPREME COURT OF CALIFORNIA

En Banc

BETH MAE HART, Plaintiff and Respondent,

v.

ROBERT HART, Individually and as Trustee, etc., Defendant and Appellant.

The petition for review is denied.

GUERRERO
Chief Justice

Appendix D

Appellant's Opening Brief to the California Court of Appeal

IN THE COURT OF APPEAL OF THE

STATE OF CALIFORNIA

IN AND FOR THE FIFTH APPELLATE DISTRICT

DIVISION

Beth Mae Hart	)	
	)	
Plaintiff and Respondent,	)	Case No. F086566
	)	
v.	)	
	)	
Robert Hart Trust	)	
Individually and as trustee of	)	
Diversified Management and	)	
Diversified management	)	
	)	
Defendant and Appellant	)	
	)	

OPENING BRIEF

Tulare County Superior Court No. VCU286706
Judge Bret D. Hillman

Robert Hart (pro-se)
47246 Dry Creek Drive
Badger, CA 93603
roberthart99@protonmail.com
559-769-3522

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DEFINITIONS AND ABREVIATIONS

CT: The Clerk's Transcript for case # F084689 is abbreviated CT. (not used in this appeal)

CAT: The Clerk's Transcript Augmented for case # F084689 is abbreviated CTA. (not used in this appeal)

CT566: The Clerk's Transcript for case # F086566 is abbreviated CT566

TABLE OF AUTHORITIES

The purpose of this Appeal is to reverse the alter ego, adding judgement debtor ruling made by minute order dated 6-27-2023
CT566, p. 420

STATEMENT OF THE CASE

The Old Oak Holdings trust (hereinafter "Trust") and Cedar Grove Holdings trust are both irrevocable trusts established by trustor Beverly Jean Ketter on January 12, 2007 and December 29, 2007, respectively. They are irrevocable trusts, for the benefit of her grandson Jason Robert Hart, at the time of establishment. On or about March 13, 2007, Old Oak Holdings trust acquired a 3.27 acre lot of undeveloped real property in Three Rivers, California, commonly known as APN #067-070-034-000. This is in fact the only transaction or asset Old Oak Holdings has ever executed. On or about 11-11-2019 (which was 1.5 years before the Complaint was served) Cedar Grove Holdings trust acquired a home in Badger CA, commonly known as 47246 Dry Creek drive. This is in fact the only transaction or asset Cedar Grove Holdings has ever executed.

From the inception of the case, through discovery and trial, Old Oak Holdings trust or Cedar Grove Holdings trust was not a party. Plaintiffs had ample time to add the irrevocable trusts as parties, but did not do so. Old Oak Holdings and Cedar Grove Holdings were also not a party to the agreement that was the subject of dispute underlying the dispute in this matter.

Despite these facts, following judgment against *Robert Hart as an individual*, the Plaintiff sought to add said Trusts as a judgment debtors, on the theory that the trusts are the "alter ego" of Robert Hart individually.

In Plaintiff's motion, she did not present any actual evidence of unity of interest between Mr. Hart and the trusts. Nevertheless, the court granted the motion, and added the trusts as a judgment debtors.

Despite the Plaintiff's failure to provide evidence, the court ruled in her favor in the ruling dated 6-27-2023 CT566, p.420. This appeal challenges that ruling. The court did not cite any evidence that there is a unity of interest between Mr. Hart and the trusts. Instead, it quoted certain statements made by the court in Mr. Hart's divorce case. However, the statements of the court in Mr. Hart's divorce case are not evidence of unity of interest.

More importantly, the court ignored evidence that was actually on file. That evidence showed that the trust was irrevocable and the assets actually belong to the beneficiary of the trusts who is Settlor's grandson, Jason Hart. The record clearly shows that another third-party, Mr. Hart's son, Jason Hart, was the beneficiary of the trust long before the litigation began.

The statements made by the divorce court are not sufficient evidence. In fact, they are not evidence at all. De Cou v. Howell (1923) 190 Cal. 741 (rejecting reliance upon statements of a court not made part of the judgment).

Also, ruling that the irrevocable trusts are the alter ego of Mr. Hart, who was never even the settlor of the irrevocable trusts, contradicts California law under Laycock v. Hammer (2006) 141 Cal.App.4th 25, 31 ("a settlor's conduct after an irrevocable trust has been established will not alter the nature of such a trust."). The case is even stronger here, because Robert Hart was not even a

settlor of the irrevocable trust. Because the trust was an irrevocable trust established by a person other than Robert Hart, it simply cannot be Robert Hart's alter ego.

STATEMENT OF APPEALABILITY

The amended judgment entered pursuant to the Superior Court's ruling is an appealable final judgment pursuant to Code of Civil Procedure sections 904.1 and 906.

STATEMENT OF FACTS

Old Oak Holdings Trust was created on January 12, 2007 and Cedar Grove Holdings trust was created on December 29, 2007, by Appellant's mother. Since its creation, the only beneficiary of the Trust has been Jason Hart, Appellant's son and the Settlor's grandson. On or about March 13, 2007, Old Oak Holdings trust acquired a 3.27 acre lot of real property in Three Rivers, California, commonly known as APN #067-070-034-000. On or about 11-19-2019, Cedar Grove Holdings acquired a home located at 47246 Dry Creek Drive in Badger CA.

The Trusts were not made a party to the underlying action. As such, it had no opportunity to defend against the Complaint, conduct discovery, or assert its own defenses at trial.

After trial, the Plaintiff moved to add the Trust as the alter ego of Robert Hart, an individual. The Plaintiff did not present any evidence of unity of interest. CT566, 97-101. A declaration was submitted by Jason Hart, the Trust's beneficiary, indicating that Jason Hart, a non-party, was in fact the beneficiary of the Trust. CT566, 140-141. Plaintiff presented no evidence contradicting that

fact. Nevertheless, the trial court granted the motion, and entered judgment against the Trust.

In granting the motion, the Court relied heavily upon statements made by a judge in a separate divorce proceeding. Those statements are not entitled to any type of *res judicata* effect or deference. Also, they are not competent evidence. As no evidence was provided to show a unity of interest between Appellant and the Trusts, the judgment must be reversed.

Also, the Court's ruling violates California law as stated in the Laycock v. Hammer (2006) 141 Cal.App.4th 25, 31 ("a settlor's conduct after an irrevocable trust has been established will not alter the nature of such a trust.") A trust established by Appellant's mother for the benefit of Appellant's son cannot be an alter ego of Appellant. And even if it could be under extraordinary circumstances, the evidence was not presented to justify such a ruling. Thus, the ruling by minute order made 6-27-2023, CT566, p.420 must be reversed.

ARGUMENT

1. No Competent Evidence was Presented to show Unity of Interest of Robert Hart and the Trust.

The Plaintiff did not present any actual evidence that the Trust was Mr. Hart's alter ego. Instead, it merely made allusions to comments by the divorce court.

The "[a]lter ego doctrine is an extreme remedy, sparingly used." Sonora Diamond Corp. v. Superior Court (2000) 83 Cal.App.4th 523, 538. In order to establish an alter ego identity, a plaintiff must show *both* a unity of interest *and* an inequitable

result. Id. ("In California, two conditions must be met before the alter ego doctrine will be invoked. First, there must be such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder to not in reality exist. Second, there must be an inequitable result if the acts in question are treated as those of the corporation alone.")

To establish alter ego identity, a long list of factors must be considered:

> "The alter ego test encompasses a host of factors: [c]omingling 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 ...; the treatment by an individual of the assets of the corporation as his own ...; the failure to obtain authority to issue stock or to subscribe to or issue the same ...; the holding out by an individual that he is personally liable for the debts of the corporation ...; the failure to maintain minutes or adequate corporate records, and the confusion of the records of the separate entities ...; 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 ...; the use of the same office or business location; the employment of the same employees and/or attorney ...; the failure to adequately capitalize a corporation; the total absence of corporate assets, and undercapitalization ...; 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 ...; the concealment and misrepresentation of the identity of the responsible ownership, management and financial interest, or concealment of personal business activities ...; the disregard

> of legal formalities and the failure to maintain arm's length relationships among related entities ...; the use of the corporate entity to procure labor, services or merchandise for another person or entity ...; 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 ...; 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 ...; and the formation and use of a corporation to transfer to it the existing liability of another person or entity.' ... [¶] This long list of factors is not exhaustive. The enumerated factors may be considered '[a]mong' others 'under the particular circumstances of each case. **No single factor is determinative, and instead a court must examine all the circumstances to determine whether to apply the doctrine."**

Zoran Corp. v. Chen (2010) 185 Cal.App.4th 799, 811-812 (emphasis added).

In this matter, Respondent did not present any evidence on these factors. No evidence of *unity of interest* between the Trust and Mr. Hart. Instead, Respondent attempted to rely on comments made by the court and parties during a hearing in a *separate marital dissolution proceeding*, but which were *not* part of the terms of the dissolution judgment.

The only way that the marital judgment could serve as a substitute for Respondent meeting her evidentiary burden is if the doctrine of collateral estoppel applied. It does not. In order for the dissolution judgment to be binding, the elements of collateral estoppel would need to have been met.

Under California Evidence Code section 500, Respondent bore the burden of establishing identity of interest with competent, persuasive evidence. She failed to do so.

The judgment should be reversed and remanded, so that the trial court can consider all of the relevant factors for an alter ego determination. Neither the trial court nor the court in the dissolution proceeding have done so.

2. The Divorce Court's Comments are Not Evidence and Are Not Part of a Judgment and Do Not Have *Res Judicata* Effect.

The divorce judgment did not contain any findings concerning the Trusts being an alter ego of Robert Hart. Instead, both Respondent and the trial court relied on comments made by the divorce court at a non-evidentiary hearing in the divorce case. The comments were not part of any judgment. So, they cannot have a *res judicata* effect. In addition, the parties in the divorce case and this case were not the same parties, and the divorce case and the case here do not involve the same causes of action, and the divorce court did not adjudicate the alter ego decision on the merits. Hi-Desert Medical Center v. Douglas (2015) 239 Cal.App.4th 717, 732 (*res judicata* requires same parties, same claim or cause of action, and must be an adjudication on the merits).

Nor does the collateral estoppel doctrine apply in this case:

> "A prior decision precludes re-litigation of issues under the doctrine of collateral estoppel only if five threshold requirements are satisfied. First, the issue sought to be precluded from re-litigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final

> and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding."

Kaur v. Foster Poultry Farms LLC (2022) 83 Cal.App.5th 320, 348-349.

In this case, the alter ego issue was not actually litigated in the dissolution proceeding. So, neither of the first two requirements for collateral estoppel. It is also without question that no alter ego determination was a *necessary* part of the marital dissolution judgment. So, the third necessary condition is not met either.

3. The Ruling Violates California Law under *Laycock v. Hammer.*

In Laycock v. Hammer, the Court of Appeal ruled that, once a trust became irrevocable, it could not be the alter ego of the individual trustor who created it. Laycock v. Hammer (2006) 141 Cal.App.4th 25, 31 ("a settlor's conduct after an irrevocable trust has been established will not alter the nature of such a trust.") Here, *a person other than Robert Hart established an irrevocable trust.* If a trustor's conduct after a trust becomes irrevocable cannot be the basis for an alter ego finding, then, as a matter of logic, the conduct of a non-trustor, non-beneficiary cannot either.

CONCLUSION

There was no evidence of unity of interest between the individual defendant and the proposed judgment debtors, both irrevocable trusts. The trial court's addition of the trust under the alter ego theory was therefore an abuse of discretion. In addition, the irrevocable trust simply cannot be the alter ego of the individual defendant Robert Hart. The trial court's ruling should be reversed.