



California Corporate & Securities Law

Is A Sole Shareholder An Employer?

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A corporate employer controls its employees. A sole shareholder controls the corporation. Is the shareholder an “employer”? A California Court of Appeal answered this question last week in [Leek v. Cooper](#).

In this case, several employees brought suits (two cases were consolidated for purposes of the opinion) against a California corporation and its sole shareholder alleging age discrimination and violation of the California Family Rights Act. The plaintiffs did not deny that only an “employer” may be liable to an employee and under these causes of action. Accordingly, the plaintiffs claimed that the sole shareholder was an “employer” because he exercised control over them. The plaintiffs also argued that the sole shareholder was liable under an alter ego theory.

The Court of Appeal disagreed, saying:

A determination that a person is the alter ego of a corporation does not make the alter ego an employer. Rather it makes the alter ego liable for the obligations of the corporation.

Although this case involved an appeal from summary judgment in favor of the shareholder, the Court of Appeal chose to view the case as “a pleading case masquerading as a summary judgment case.” In upholding the trial court, the Court of Appeal found that the plaintiffs had failed to specifically allege alter ego liability and facts showing a unity of interest and inequitable result. In reaching this result, the Court had to distinguish earlier cases in which the complaints had not been required to include alter ego pleadings.

For those with an interest in alter ego, the case is a good read – particularly the section dealing with whether the trial court should have allowed the plaintiffs to amend their complaints.

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