



# California Corporate & Securities Law

## Got Judgment? It May Not Be Too Late To Add A Judgment Debtor

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Suppose that you sue a limited liability company to enforce a note and win your case. You also sue the sole owner of the LLC for fraud, but the court is not persuaded. Now, you have a judgement against the LLC but would really like to add the sole owner of the LLC as a judgment debtor. The alter ego theory might work, but you failed to plead it in the original complaint. Are you out of luck?

Earlier this week, the Second District Court of Appeal in [Misik v. D'Arco](#) held that "Code of Civil Procedure section 187 authorizes a trial court to amend a judgment to add a judgment debtor who is found to be an alter ego of a corporate defendant." The court found that because the alter ego doctrine is premised on the theory that an identity of interest exists between two parties, "amending a judgment to add an alter ego does not add a new defendant but instead inserts the correct name of the real defendant."

One disturbing aspect of the opinion is the court's apparent failure to distinguish between corporations and limited liability companies. Based on the original judgment debtor's name, Sayrahan Group, LLC, it appears that it is a limited liability company. The court's opinion also does not indicate the jurisdiction in which it was organized.

When the California legislature considered enactment of a limited liability company law, the trial lawyers insisted that the new law expressly authorize alter ego claims. Corporations Code Section 17101(b) therefore essentially provides that members may be subject personal liability to the same extent as a shareholder of a corporation. However, the statute includes one important exception:

*[T]he failure to hold meetings of members or managers or the failure to observe formalities pertaining to the calling or conduct of meetings shall not be considered a factor tending to establish that a member or the members have alter ego or personal liability for any debt, obligation, or liability of the limited liability company where the articles of organization or operating agreement do not expressly require the holding of meetings of members or managers.*

The opinion in *Misik* does not refer to Section 17101(b) and the court seems to treat the entity defendant as a corporation. For example, the court wrote "The judgment had found a corporate entity, Sayrahan Group, LLC, liable . . . ." The court also found that "No one ever prepared or kept *corporate* meeting minutes for Sayrahan." The opinion, moreover, discusses the tests for disregarding the *corporate* entity and does not mention the above exception applicable to LLCs. Thus, either the name of the entity is misleading or the court really was confused about the type of entity involved.

Please contact **[Keith Paul Bishop](#)** at Allen Matkins for more information [kbishop@allenmatkins.com](mailto:kbishop@allenmatkins.com)

<http://www.calcorporatelaw.com/>