



California Corporate & Securities Law

Plaintiff's Assertion of "L'état, c'est moi" Falls On Deaf Ears

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A plaintiff will usually advance an alter ego claim against a defendant. When a plaintiff asserts an alter ego claim against itself, then you have a real "man bites dog" or perhaps a "man bites himself" case. Occasionally, however, a man does bite his best friend – maybe even to save his best friend as reported in this [story](#).

In *Opp v. St. Paul Fire & Marine Ins. Co.*, 154 Cal. App. 4th 71 (2007), the plaintiff was a licensed building contractor who also happened to be president of a Montana corporation, Mountain Connection, Inc. (MCI). MCI signed a contract with a general contractor. After the general contractor filed for bankruptcy, MCI sued on a payment bond. The bonding company defended by claiming that MCI was an unlicensed contractor. Because that was apparently the case, the plaintiff, an individual, amended the complaint and tried to establish that "everyone involved . . . had treated MCI as an alter ego or a fictitious name under which appellant [the plaintiff below] did business."

The plaintiff's claim that MCI was simply a fictitious business name under which he did business came to grief, however, on the rock of California's fictitious business name law. Under that law, the courthouse door is closed to any plaintiff who transacts business under a fictitious business name until a fictitious business name statement has been executed, filed and published. Cal. Bus. & Prof. Code § 17918.

One might assume that the plaintiff could have simply filed and published a fictitious name statement and proceeded with his suit. However, the court concluded that this was not possible because Business & Professions Code Section 17910.5(a) and (c) provide:

(a) No person shall adopt any fictitious business name which includes "Corporation," "Corp.," "Incorporated," or "Inc." unless that person is a corporation organized pursuant to the laws of this state or some other jurisdiction.

(c) A county clerk shall not accept a fictitious business name statement which would be in violation of this section.

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Thus, the plaintiff could not be doing business under the name "Mountain Connection, Inc." because he wasn't a corporation and the county clerk is prohibited from filing a fictitious business name statement that includes an indicium of corporateness on behalf of someone who isn't a corporation.

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