

NO. A10-263

State of Minnesota
 In Court of Appeals

JL Schwieters Construction, Inc.,

Respondent,

v.

Goldridge Construction, Inc., et al.,

Defendants/Cross-Claimants,

and

Goldridge Group, LLP,

Appellant.

APPELLANT'S BRIEF IN RESPONSE
 TO RESPONDENT'S BRIEF AND APPENDIX

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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ARGUMENT

I. **RESPONDENT HAS FAILED TO SHOW THAT WPIGH AND GCI ARE ALTER EGOS OF APPELLANT AND THEREFORE, THE ACTIVITIES OF WPIGH AND GCI SHOULD NOT BE CONSIDERED IN DETERMINING WHETHER GG IS SUBJECT TO JURISDICTION IN MINNESOTA**

a. **RESPONDENT'S BRIEF RELIES EXCLUSIVELY ON THE ASSERTION THAT WPIGH AND GCI ARE ALTER EGOS OF GOLDRIDGE GROUP, LLP**

Respondent's brief contests Appellant's brief primarily in only one aspect. Respondent asserts that WPIGH and GCI are mere alter egos of Goldridge Group, LLP ("Appellant") and because WPIGH and GCI are subject to jurisdiction in Minnesota, therefore, Appellant is subject to jurisdiction in Minnesota. Because this is the only argument addressed by Respondent's brief, this response is limited to showing that WPIGH and GCI are not alter egos of Appellant. In light of Respondent's limitation to that of an alter ego, Appellant submits that all other points asserted by Appellant in its brief should be accepted by this Court.

b. **ALTER EGO STANDARD**

The legal standard to find that an entity is the alter ego of another is clear and undisputed by Respondent. Both Zimmermann and Mego stand for the proposition that if companies are "organized and operated so that one corporation is an instrumentality or alter-ego of the other corporation" a nonresident corporation may be subject to jurisdiction of Minnesota "by virtue of the activities of its subsidiary company." Scott v. Mego Intern., Inc., 519 F.Supp. 1118,

D.C. Minn., 1981 and Zimmerman v. American Inter-Insurance Exchange, 386 N.W.2d 825, 828 (Minn.Ct.App.1986). “[It is generally presumed that the subsidiary is a legally separate entity from its parent corporation.” Busch v. Mann, 397 N.W.2d 391, 395 citing United States v. Advance Machine Co., 547 F.Supp. 1085, 1093 (D.Minn.1982). Simply stating that one entity is organized and controlled to be the alter ego of another does not make it so. The Court in Mego demonstrated the lengths to which the inquiry should be carried out prior to disregarding the independence of an entity. In Mego, the Court looked to the following factors:

1. Mego International, Inc. conducts business through its wholly-owned subsidiaries which are closely interrelated.
2. Mego International, Inc. maintains offices at the same location as the defendant Mego.
3. Both directors of Mego are also directors of Mego International, Inc.
4. A number of the same people are officers of both corporations.
5. Mego International and its subsidiaries issue consolidated summaries of operations, financial statements, statements of income, statements of changes in financial position, and statements of shareholders' equity.
6. Mego International and the domestic subsidiaries file consolidated federal income tax returns, and Mego International guarantees the credit facility of its domestic subsidiaries and funds their pension plans.
7. Mego International holds itself out to the public as having substantial control over its subsidiaries, including Mego, and its annual report and other financial documents reveal that it does, in fact, have such control.
8. The parent-subsidiary relationship appears to be a convenient means for Mego International to organize its domestic and international business. The Mego International prospectus indicates that Mego International was incorporated “for the purpose of continuing in one venture the business and management of Mego Corp., a New York corporation, and Lion Rock

Trading Co., Limited, a Hong Kong corporation.” Scott v. Mego Intern., Inc., 519 F.Supp. 1118, D.C. Minn., 1981.

The Court does not distinguish which factors carry the most weight in its decision to find that an alter ego existed, however, factors 5, 6, 7 and 8 go to the heart of the actual intertwining of business operations (as opposed to office location, for example). Id.

Respondent asserts that the “laundry list” of items reviewed by the Court in Mego are not requirements, but merely items the Court in Mego found supported alter ego in that instance. Respondent’s Brief, page 12. Even if this “laundry list” were not required in each instance, the Court’s review and reliance on the extent to which the two companies were intertwined is illustrative of the relationship required prior to disregarding an entity’s existence and relegating it to an alter ego of another entity.

c. GCI IS NOT AN ALTER EGO OF GG AND THEREFORE THE ACTIONS OF GCI SHOULD NOT BE CONSIDERED FOR JURISDICTIONAL PURPOSES.

Respondent’s brief states over and over again that WPIGH and GCI are nothing more than shell companies and alter egos of Appellant. Respondent’s Brief, pages 5, 6, 7, 8, etc... However, a review of Respondent’s actual allegations and proof (or lack thereof) make it clear that GCI is an independent entity from GG and therefore the actions of GCI should not be considered in a jurisdictional analysis.

Respondent’s allegations attempting to link GCI as an alter ego of Appellant, in their totality, are as follows: GCI operated using employees of GG without management services agreements, GCI’s income flowed to GG. Respondent’s Brief, page 6. This is undeniably insufficient to show that GCI was organized and operated as a mere

instrumentality of Appellant. Rather, as noted by Respondent, GCI conducted business as a general contractor, (page 4) GCI oversaw the construction of the Subject Property, (page 4) GCI hired subcontractors for the project. (page 5) and then failed to pay its subcontractors (page 5, 6). By Respondent's own argument, GCI conducted an enormous amount of business as its own entity, and not as an alter ego.

Additionally, Respondent does not even allege that GCI did not file its own tax returns, financial statements, or other corporate documents. GCI does not hold itself out to the public as a subsidiary of Appellant and, finally, GCI did not guaranty the debts of Appellant. GCI is an independent entity from Appellant. Despite Respondent's insistence, without proof, Respondent has no facts showing that GCI was organized and operated such that it is an alter ego of Appellant. Accordingly, it is improper to consider the actions of GCI when determining whether jurisdiction is proper in Minnesota over Appellant.

d. RESPONDENT HAS ALSO FAILED TO SHOW THAT WPIGH IS AN ALTER EGO OF GG

In support of its assertion that WPIGH was organized and controlled as an alter ego of Appellant, Respondent relies primarily on facts about WPIGH, such as that WPIGH has no employees, did not maintain corporate formalities, and that it owned property, rather than showing the interrelationships between WPIGH and Appellant. Respondent also then asserts that Appellant received money from Appellant and executed a guaranty for a loan taken out by WPIGH. Respondent's Brief, page 6. Again, these

assertions lack the evidentiary support to show that the corporate identity of WPIGH should be disregarded.

Contrary to Respondent's assertions, WPIGH did in fact maintain corporate formalities; WPIGH owns property independently of Appellant, WPIGH files its own tax returns, creates its own financial statements and balance sheet, has its own corporate records which have been supplied to the Respondent, and has its own bank accounts. A-35, A-76-A-79. WPIGH controls its own operations, as does Appellant. A-35.

Respondent cites the guaranty executed by Appellant for the benefit of WPIGH as a factor in favor of a finding that WPIGH is merely an alter ego of Appellant. The guaranty executed by Appellant is an isolated transaction unlike the continuing guaranty of an entire credit facility and continued funding of a pension plan cited by the Court in Mego as a factor in favor of finding that an alter ego existed in that case. Scott v. Mego Intern., Inc., 519 F.Supp. 1118, D.C. Minn., 1981. Here, should the Court consider the guaranty as a factor in determining whether WPIGH is an alter ego of Appellant, it should consider it for what it is, namely, an isolated transaction in which one independent entity vouched for another independent entity. The commercial marketplace would be turned upside down if a party became an alter ego because it executed a guaranty in support of another entity.

The transfers cited by the Respondent are transfers of funds from one independent entity to another independent entity. Both entities participating in the transfers are registered in the State of Wisconsin. These transfers all have one thing in common – the transfers took place in Wisconsin between two entities organized under the laws of the

State of Wisconsin. Respondent, in support of its contention that WPIGH is an alter ego of Appellant and WPIGH's activities should be considered in determining whether Appellant is subject to jurisdiction, relies in part on transactions between two Wisconsin entities which took place in the State of Wisconsin. Appellant and WPIGH conducted business together, and conducted business in the State of Wisconsin. This does not serve as evidence of any kind to find that WPIGH is an alter ego of Appellant.

Respondent has failed to show facts that would justify disregarding WPIGH's corporate form. The entities in Mego intertwined virtually all of their operations, from filing consolidated tax returns, to holding themselves out to the public as one venture. Scott v. Mego Intern., Inc., 519 F.Supp. 1118, D.C. Minn., 1981. The opposite is the case here. WPIGH has always strictly maintained its independence, owning property in its own right, conducting business independently of other entities, owning its own bank accounts, and filing its own taxes. A-35, A-76-A-79.

Therefore, the independent activities of WPIGH should not be considered in determining whether Appellant is subject to the jurisdiction of Minnesota courts.

CONCLUSION

Respondent has responded to Appellant's brief by asserting only that WPIGH and GCI are alter egos of Appellant. In support of this assertion, Respondent has asked the Court to disregard the extensive interconnectedness required by the Court in Mego, and employ a more relaxed standard that would seek to find that one entity is an alter ego of another in instances where the two companies conduct business with each other. The Plaintiff has failed to allege and there is no support for the District Court to determine the

control required to conclude that WPIGH and GCI are mere alter egos of Appellant. Accordingly, the activities of WPIGH and GCI should not be considered in determining whether Appellant is subject to the jurisdiction of Minnesota Courts. Therefore, the District Court's reliance on the activities of GCI and WPIGH were improper to confer and determine personal jurisdiction over Appellant.

For the reasons outlined above, this proceeding should be remanded with instructions to dismiss Appellant from the District Court above captioned District Court lawsuit.

Respectfully submitted,

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