NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE NINTH CIRCUIT

In re:	BAP No. NV-05-1000-KMoB
STANLEY WARDLE and SINDY WARDLE,	Bk. No. S-01-21542-BAM
	Adv. No. S-03-01467
Debtors.	
TOM R. GRIMMETT, Trustee,	
Appellant,	
v.	**MEMORANDUM**[*]
RICHARD MCCLOSKEY,	
Appellee.	

Argued and Submitted on November 30, 2005
at Las Vegas, Nevada

Filed – January 31, 2006

Appeal from the United States Bankruptcy Court
for the District of Nevada

Honorable James M. Marlar, Bankruptcy Judge, Presiding.

Before: KLEIN, MONTALI and BRANDT, Bankruptcy Judges.

[*]This disposition is not appropriate for publication and may not be cited except when pertinent under the doctrine of law of the case or the rules of res judicata, including issue and claim preclusion. See 9th Cir. BAP Rule 8013-1.

The bankruptcy court granted appellee McCloskey's Motion for Judgment on the Pleadings, ruling that the trustee of a corporation's shareholder did not have standing to avoid transfers made from a nondebtor corporation to another corporate investor and purported shareholder pursuant to 11 U.S.C. § 547 and § 548. Accordingly, the complaint as against McCloskey, a nondebtor, was dismissed.

Thereafter, the trustee filed a Motion to Alter or Amend Judgment pursuant to Federal Rule of Civil Procedure 59(a), incorporated by Federal Rule of Bankruptcy Procedure 9023, contending that the court's previous order should be set aside because the court made a manifest error of law by not recognizing that the trustee had standing under the Nevada doctrine of "reverse corporate piercing" enunciated in LFC Mktg. Group, Inc. v. Loomis, 116 Nev. 896, 8 P.3d 841 (2000). The bankruptcy court denied the motion and ruled that even if the trustee had standing, it could not prosecute the § 547 and § 548 actions because they were not property of the estate pursuant to 11 U.S.C. § 541.

We AFFIRM.

FACTS

Debtors, Stanley and Sindy Wardle, operated a sole proprietorship business known as Consolidated Noble. On October 5, 1999, Wardle incorporated Consolidated, which then became Consolidated Noble, Inc. ("Consolidated"), a Nevada corporation. Stanley Wardle is a shareholder of Consolidated.

Richard McCloskey made loans to Consolidated in the approximate amount of $1.6 million, which funds were to be

utilized for research and development projects. The terms of the loans did not fix a schedule for payment.

On behalf of and in the name of Consolidated, McCloskey established an account with First Security Bank, later Wells Fargo, N.A., in Provo, Utah. McCloskey and Wardle were the only signators to the account.

On March 2, 2000, Consolidated purchased a Certificate of Deposit ("CD") from US Reservation Bank & Trust ("USRBT") with a maturity date of March 2, 2001 and accruing interest at the rate of 6.5 percent. Sometime thereafter, Consolidated paid McCloskey $30,000, which consisted of the interest payment received on the CD.

On November 22, 2000, McCloskey withdrew the sum of $1,990,291.59 from the First Security Bank account. On November 29, 2000, Consolidated liquidated the CD and USRBT wire transferred the funds to Consolidated's account.

On November 2, 2001, debtors, d.b.a. Consolidated Noble (but not Consolidated Noble, Inc.), filed a voluntary petition under chapter 7.

On November 3, 2003, the trustee commenced an adversary proceeding against Consolidated, Wardle, and McCloskey. The complaint alleged that Wardle and McCloskey were the sole shareholders of Consolidated. The first and second claim for relief requested that the court declare McCloskey and debtors to be the alter ego of Consolidated. The complaint did not make any reference to the trustee piercing the corporate veil, either in the classic sense or in the "reverse."

The three other claims for relief alleged that the two transfers of $30,000 and $1,990,291.59 made from Consolidated to McCloskey were preferential transfers pursuant to § 547 and fraudulent transfers pursuant to § 548. Pursuant to 11 U.S.C. § 550(a)(1), the trustee claimed he was entitled to avoid the preferential transfers and recover the property transferred or the value of the preferential transfers.

On January 22, 2004, the court clerk entered the defaults of all three defendants. On February 25, 2004, a stipulation and order setting aside the default against McCloskey was entered. That same day, McClosky filed an answer. Two days later, McCloskey filed a motion for judgment on the pleadings. The motion requested judgment in his favor for two reasons: (1) the trustee lacked standing to assert the claims in the complaint; and (2) the trustee's claims were barred by the statute of limitations.

On March 19, 2004, the trustee filed an opposition, wherein he asserted that the motion was procedurally defective, that McCloskey was not entitled to judgment on the pleadings, and that the trustee's claims were not barred by the statute of limitations.

In McCloskey's reply to the trustee's opposition, he withdrew his statute of limitations argument.

On August 2, 2004, the court entered a memorandum decision granting McCloskey's motion and rejecting the procedural challenge. The court held that the trustee did not have standing to bring alter ego claims against McCloskey because the claims would belong, if to anyone, to the trustee of the estate of

Consolidated, if only Consolidated were to be a debtor.

The court rejected the trustee's position that he had standing to assert claims against McCloskey based on In re Bldgs. By Jamie, Inc., 230 B.R. 36 (Bankr. D.N.J. 1998). The court explained that the trustee failed to note that paramount to the holding in Jamie was the fact that the debtor in that case was a corporate debtor, unlike the instant case where the debtor was a shareholder of the corporation. Thus, the court explained, if the corporate veil were pierced, the claims would not belong to the debtor but to Consolidated, and thus, in turn, would belong to the trustee of Consolidated's estate, assuming it filed bankruptcy.

Relying on Williams v. Cal.-First Bank, 859 F.2d 664 (9th Cir. 1988), the court held that the trustee had no standing to sue a corporation's shareholder on an alter ego claim.

> Congress' message is clear – *no* trustee, whether a reorganization trustee ... or a liquidation trustee[,] has power under ... the Code to assert general causes of action, such as [an] alter ego claim, on behalf of the bankruptcy estate's creditors.

Mem. Dec. (Aug. 2, 2004), at 20. Distinguishing the trustee's line of cases, the court emphasized that alter ego claims can only be property of the estate of the corporate debtor; they cannot be property of the estate of the shareholder debtor.

Likewise, as to the avoidance actions, the transfer of the funds from Consolidated to McCloskey could not be preferential or fraudulent transfers because the funds transferred were neither property of the debtors nor an interest of the debtors. Since the funds transferred were not avoidable under either § 547 or § 548, the trustee could not recover the funds pursuant to

§ 550(a)(1).

Based on the above analysis, on August 2, 2004, the court granted McCloskey's motion for judgment on the pleadings and dismissed the trustee's complaint against him. The court concurrently entered a separate judgment with the memorandum decision.

On August 12, 2004, the trustee filed a Motion to Alter or Amend Judgment pursuant to Federal Rule of Civil Procedure 59 incorporated by Federal Rule of Bankruptcy Procedure 9023. The trustee asserted that he was entitled to an order amending the court's judgment because its decision to dismiss trustee's complaint constituted a manifest error of law. Specifically, the trustee explained that the court failed to recognize the doctrine of reverse corporate piercing annunciated by the supreme court in Loomis. In Loomis, the Nevada Supreme Court adopted the theory of reverse piercing of the corporate veil, which allows the debts of an individual to be satisfied from the assets of a corporation determined to be the alter ego of said individual.

The trustee alleged that he sought a finding from the court that Consolidated was the alter ego of the debtors.[1] To the extent that Consolidated was deemed to be the alter ego of the debtors, under his theory, all of the assets of Consolidated would be property of the Wardle estate pursuant to § 541, including, but not limited to, the claims for preferential

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[1]Technically, the trustee's complaint sought a finding that debtors and McCloskey were the alter egos of the corporation. Although the trustee refers to the "debtors" in his complaint and throughout his pleadings, his complaint was only against debtor Stanley Wardle.

transfer pursuant to § 547. In support of his proposition, trustee cited several cases outside of this circuit that have allowed a trustee to prosecute an avoidance action through reverse piercing of the corporate veil. Moreover, the trustee argued that the courts that have refused to allow reverse alter ego claims have done so because the state law had not adopted the cause of action.

On December 10, 2004, the court issued a memorandum decision denying the Motion to Alter or Amend Judgment. The court explained that the parties did not disagree that Loomis was the controlling case in Nevada regarding piercing the corporate veil in the reverse. The court did not squarely address whether the trustee had standing under this theory, but instead explained that even accepting the trustee's theory one reached a dead end.

The court reasoned that assuming arguendo that Consolidated was the alter ego of Wardle, the trustee would be able to reach Consolidated's assets to satisfy debtors' debts. Using the strong arm powers of § 544(a), the trustee would assume the position of the debtor's hypothetical lien creditors and could, therefore, stand in the shoes of a Wardle creditor, reverse pierce the corporate veil, and use Consolidated's assets to satisfy Wardle's debts.

In terms of the preferential transfer, again assuming arguendo that the trustee were able to reverse pierce the corporate veil and utilize Consolidated's assets to satisfy debtors' debts, the court explained that one would have to take Consolidated's assets into account. Specifically, Consolidated was no longer operating, and the court had already granted the

trustee's motion to sell Consolidated's assets to satisfy debtors' debts. Thus, applying Nevada law, the court reasoned that the corporate veil had been pierced and the trustee had thus exhausted all remedies.

At the same time, the court emphasized that Consolidated was not a bankruptcy debtor and the trustee could not assume the federal strong arm powers of § 544(a), act as if he were also Consolidated's bankruptcy trustee, and then selectively enforce a bankruptcy cause of action that would belong to Consolidated's estate pursuant to § 541.

Finally, the court added that the trustee's complaint failed to state a claim or cause of action against McCloskey. Accordingly, on December 10, 2004, the court entered a Partial Judgment in favor of McCloskey on both the Motion to Dismiss and the Motion to Alter or Amend pursuant to Rule 59. The Partial Judgment was certified pursuant to Rule 54(b).

This timely appeal ensued.

JURISDICTION

The bankruptcy court had jurisdiction via 28 U.S.C. § 1334. We have jurisdiction under 28 U.S.C. § 158(a)(1).

ISSUE

Whether the bankruptcy court erred by entering judgment in favor of McCloskey and dismissing the adversary complaint as against McCloskey with prejudice.

STANDARD OF REVIEW

The bankruptcy court's decision granting McCloskey's motion for judgment on the pleadings is subject to de novo review. Mitchell v. Cal. Franchise Tax Bd. (In re Mitchell), 222 B.R. 877, 879 (9th Cir. BAP 1998).

DISCUSSION

The trustee's complaint boils down to his claim under § 547 and § 548 asserted through the matrix of multiple alter ego claims.

We are persuaded that the trustee of an individual shareholder lacked standing to assert bankruptcy-specific avoiding actions under § 547 and § 548 to recover for the benefit of the shareholder's estate transfers made by Consolidated, which is a separate legal entity that is not a debtor. Those avoiding actions would belong only to the Consolidated trustee only if Consolidated were to be a debtor. We are also persuaded that under these facts the trustee of the individual shareholder cannot obtain the relief he seeks as against McCloskey even if he pierced Consolidated's veil in the reverse.

I

The trustee of debtor shareholder's estate does not have standing to avoid transfers made from a nondebtor corporation to a third party creditor pursuant to either § 547 or § 548.

The trustee is empowered to avoid a "transfer of an interest of the debtor in property." 11 U.S.C. §§ 547 and 548. Here, under Nevada law, debtors do not have an interest in the property

transferred. Wood v. Bright (In re Bright), 241 B.R. 664, 666 (9th Cir. BAP 1999)(absent a federal provision to the contrary, a debtor's interest in property is determined by applicable state law). The § 547 and § 548 bankruptcy avoiding power causes of action the trustee wishes to pursue are causes of action that do not exist under nonbankruptcy law and, hence, are not assets in the conventional sense because they are not choses in action that constitute interests in property that exist in the absence of bankruptcy. Thus, neither debtors nor Consolidated have choses in action that could be interests in property under Nevada law.

Moreover, the transferred funds were not property of the estate pursuant to § 541 because there is no evidence that the funds ever belonged to the debtors. As the bankruptcy court noted, the funds were property of Consolidated as evidenced by the fact that they were transferred from Consolidated's bank account. And as appellee argues, an alter ego determination will not somehow transmogrify Consolidated's funds into property of debtors' estate.

Unless and until Consolidated is a debtor, either by a filed bankruptcy petition or by substantive consolidation, there is no corporate bankruptcy estate and, thus, the trustee cannot pursue § 547 and § 548 actions in its name. In other words, under the Code, the only way the appellant trustee could avoid the transfers of property that belonged to Consolidated would be for Consolidated to become a debtor and for the cases to substantively consolidate under his control.

The test for substantive consolidation in the Ninth Circuit requires consideration of two alternative factors: (1) whether

creditors dealt with the entities to be consolidated as a single economic unit and did not rely on their separate identity in extending credit; or (2) whether the affairs of the debtor are so entangled that consolidation will benefit all creditors. Alexander v. Compton (In re Bonham), 229 F.3d 750, 766 (9th Cir. 2000), adopting test from Union Sav. Bank v. Augie/Restivo Baking Co. (In re Augie/Restivo Baking Co.), 860 F.2d 515, 518 (2d Cir. 1988).[2]

A petition could also be filed commencing a voluntary or involuntary bankruptcy case on behalf of the corporation. 11 U.S.C. §§ 301 & 303.

The trustee contends that his alter ego theory enables him to finesse the Ninth Circuit's Bonham substantive consolidation analysis or conventional bankruptcy procedure for obtaining voluntary or involuntary orders for bankruptcy relief with respect to third parties and, instead, urges that piercing the corporate veil in the classic sense or in the reverse would not require that Consolidated have debtor status. We are not persuaded.

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[2]We do not construe the complaint as a request to substantively consolidate for four reasons. First, as mentioned above, there are recognized procedures to substantively consolidate. Second, the trustee explained at oral argument that he did not seek substantive consolidation because under his theory Wardle, Consolidated and McCloskey were a single entity with one debtor estate. Third, McCloskey did not have sufficient notice that such relief would be granted. Fourth, the two concepts are mutually exclusive. "Veil Piercing" is intended to defeat a corporation's limited liability when its shareholders dominate and control the corporation's activities, and "substantive consolidation" is intended to redistribute two or more debtors' collective assets when creditors detrimentally relied on debtors' interconnectedness. 18 AM. JUR. 2D CORPORATIONS § 46 (1985).

Because the trustee cannot avoid the transfers under bankruptcy-specific causes of action, his only other method of doing so would be if applicable nonbankruptcy law allowed him to do so. As we shall explain, the trustee's complaint does not allege any substantive cause of action under Nevada law that would give him the power to do so.

Because we conclude that the trustee has no standing to prosecute the § 547 and § 548 causes of action, the trustee is only left with his multiple alter ego claims.

II

The trustee's alter ego theory,[3] which he argues should result in piercing the corporate veil in the reverse, is flawed in several respects. He argues that an alter ego theory would change all the property of Consolidated into property of the debtors and that all "assets" of Consolidated would be property of the debtors' estate pursuant to § 541, including, but not limited to, the § 547 and § 548 claims. As the bankruptcy court explained, and mentioned above, the flaw in appellant trustee's reasoning is that the "assets" of Consolidated, a non-debtor, do not include causes of action that exist only in bankruptcy.

Moreover, the trustee's argument proves too much in that even under his reasoning, to get to a place where he could be in a position to avoid the subject transfers he has to take multiple steps that, as the bankruptcy court noted, stretch the law past the breaking point. First, the trustee contends that Consolidated

[3]A standard statement of Nevada law on the alter ego doctrine is: AE Rest. Assocs., LLC v. Giampietro (In re Giampietro), 317 B.R. 841 (Bankr. D. Nev. 2004).

is the alter ego of debtor and, thus, debtor and Consolidated are identical. The trustee arrives at this conclusion by using Nevada law to pierce the corporate veil in the reverse. LFC Marketing Group, Inc., 116 Nev. at 903-04, 8 P.3d at 847 (an alter ego doctrine may be applied in "reverse" in order to reach a corporation's assets to satisfy a controlling individual's debt[4]). Next, because debtor and Consolidated are purportedly one entity,[5]

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[4]Loomis involved a judgment creditor piercing the corporate veil in the reverse to reach the assets of the corporation to satisfy the debt of a corporate insider based on a showing that the corporate entity is the alter ego of the insider. LFC Mktg. Group, Inc., 116 Nev. at 898, 8 P. 3d at 843. The Nevada Supreme Court specifically approached the issue in the context of a creditor reaching personal assets of a corporation to satisfy the debts of a corporate insider based on a showing that the corporate entity is really the alter ego of the individual (citing to discussion of "outsider reverse piercing" in Gregory S. Crespi, The Reverse Piercing Doctrine: Applying Appropriate Standards, 16 J.CORP.L. 33, 38 (1991)). Id. at 846.

We are mindful that there are is a difference between a third party creditor piercing the corporate veil in the reverse and an insider shareholder piercing the corporate veil in the reverse. The crucial distinction between insider and outsider reverse piercing claims is the relative position of the persons seeking corporate disregard and their opponents. The Reverse Piercing Doctrine: Applying Appropriate Standards, 16 J.CORP.L. at 37. In insider reverse claims, the controlling corporate insider seeks to have the corporation disregarded over the objections of a third party. Id. On the other hand, in outsider claims the third party seeks to have the corporation disregarded over the objections of the insider and the corporation. Id.

Although we know of no Nevada cases that have allowed a shareholder to bring an alter ego claim that has resulted in piercing the corporate veil, we do not need to decide whether the trustee in this instance has standing to bring the alter ego claim. We assume, without deciding, that even if the trustee has standing to pursue an alter ego claim against Consolidated, he cannot avoid the transfers from Consolidated to McCloskey.

[5]Although the trustee argues that it is uncontroverted that Consolidated and debtor are alter egos of one another and that the bankruptcy court somehow agreed, the trustee misconstrues the bankruptcy court's ruling.

the trustee contends he is entitled to assert Consolidated's alter ego claim against McCloskey in order to avoid the subject transfers pursuant to § 547 and § 550.

There are several problems presented by the trustee's theory. The basic flaw is that the trustee's two-step approach to avoiding the subject transfers goes too far. If the trustee merely sought to prove that Consolidated was the alter ego of the debtor, his claim might be more meritorious. As the bankruptcy court noted, and mentioned above, assuming the trustee proved that Consolidated was the alter ego of the debtors, Consolidated's assets would be available to satisfy the debts of the debtors. However, the trustee seeks more relief than that without citing any apparent authority that would allow him to take his next step. Presumably, the trustee does not merely seek a finding that Consolidated is the alter ego of the debtor, because Consolidated does not have any more assets to satisfy debtors' creditors. In fact, the assets that Consolidated did own were already sold to satisfy debtors' creditors. Because the trustee in this instance would not gain from merely proving that Consolidated is the alter ego of the debtor alone, he proposes that an alter ego relationship between the debtor and Consolidated makes them one entity, and, thus, allows him to pierce the corporate veil in the classic sense to reach McCloskey and avoid the subject transfers.

No apparent decisional authority supports the trustee's theory. The line of cases that the trustee cites are not controlling and are inapposite: Martinson v. Towe (In re Towe), 173 B.R. 197, 201 (Bankr. D. Mont. 1994)(piercing the corporate veil in the reverse to reach corporation's assets to satisfy

debtor's creditors); McClearly Cattle v. Sewell, 73 Nev. 279, 281-82, 317 P.2d 957, 958-59 (1957)(ruling that a cattle company was the alter ego of a timber company thereby making the assets of the cattle company available to satisfy a judgment in favor of a third party against the timber company); APAC-Virginia, Inc. v. Jenkins Landscaping & Excavating, Inc. (In re Jenkins Landscaping & Excavating, Inc.), 93 B.R. 84, 88 (adversary proceeding commenced by third-party creditor wherein the court ultimately held that nondebtor corporation was the alter ego of debtor and, thus, the nondebtor corporation had to turn over its property and assets to debtor to satisfy creditors); In re Crabtree, 39 B.R. 718, 721 (Bankr. E.D. Tenn. 1984)(creditors authorized to amend debtor's involuntary petition nunc pro tunc to add debtor's alter ego corporation to the caption); In re Elkay Indus., Inc., 167 B.R. 404, 411 (D.S.C. 1994)(summary judgment denied and trustee authorized to assert an action to pierce the corporate veil in the reverse) (the trustee sought to recover a prepetition preference payment made by the debtor, as opposed to a preference payment made by the corporation, as the trustee would like it here); In re Shuster, 132 B.R. 604 (Bankr. D. Minn. 1991)(trustee had standing to bring an action to pierce the corporate veil in the reverse that would make all of the *assets* of both the debtor and the corporation available for the satisfaction of all claims allowed in debtor's bankruptcy estate).

The trustee's multiple alter ego theory that would purportedly allow him to reach McCloskey is not supported by the above-referenced cases which were decided within a more narrow framework that only entailed the finding of one alter ego

relationship to satisfy the debts of another through the alter ego's assets. In other words, even if the trustee successfully pierced Consolidated's veil in the reverse, he still is not able to reach McCloskey. As such, the bankruptcy court correctly held that the trustee failed to state a legal claim or cause of action against McCloskey.

III

Two other problems with the trustee's theory are worth noting. First, an alter ego claim is a remedy that, without an underlying substantive cause of action, does not lead to substantive relief. 1 WILLIAM MEADE FLETCHER ET AL., FLETCHER CYCLOPEDIA ON THE LAW OF PRIVATE CORPORATIONS § 41.10 (perm. ed., rev. vol. 1999)("FLETCHER"), cited with approval, Cohen v. Mirage Resorts, Inc., 119 Nev. 1, 62 P.3d 720 (2003), and Trident Constr. Corp. v. West Elec., Inc., 105 Nev. 423, 776 P.2d 1239 (1989), and Schwabacher & Co. v. Zobrist, 102 Nev. 55, 714 P.2d 1003 (1986), and Nevada Land & Mortgage Co. v. Lamb, 90 Nev. 247, 524 P.2d 326 (1974), and Katzir's Floor & Home Design, Inc. v. M-MLS.com, 394 F.3d 1143, 1149 (9th Cir. 2004), and SEC v. Hickey, 322 F.3d 1123, 1130 (9th Cir. 2003).

Second, the trustee misconstrues the consequence of an alter ego finding. While the trustee's theory would result in some type of merger, an alter ego finding only imposes liability. SEC v. Hickey, 322 F.3d at 1130. We consider those two issues in turn.

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A claim based on the alter ego theory is not in itself a claim for substantive relief, but rather is procedural. FLETCHER § 41.10. "A finding of fact of alter ego, standing alone, creates no cause of action. It merely furnishes a means for complainant to reach a second corporation or individual upon a cause of action that otherwise would have existed only against the first corporation. An attempt to pierce the corporate veil is a means of imposing liability on an underlying cause of action, such as a tort or breach of contract. The alter ego doctrine is thus remedial, not defensive, in nature." Id.

Here, the trustee did not plead any underlying causes of action. Not only is there no tort or breach of contract cause of action, the trustee did not allege any state causes of action under fraudulent transfer statutes that would allow him to avoid the subject transfers. Instead, the trustee only pleaded bankruptcy specific causes of action which he cannot pursue under these circumstances.

2

As to the second point, the trustee's argument appears to require some type of merger between the debtor and Consolidated. Specifically, the trustee states that he agrees "that no merger is effectuated by virtue of the alter ego finding. Rather, the alter ego finding effectively establishes that no separate entities exist requiring a merger. Rather, the two entities are identical." We are not persuaded.

An alter ego finding is merely a remedy that results in the corporate veil being pierced only to impose "liability." SEC v. Hickey, 322 F.3d at 1130. As held by the Ninth Circuit,

> Reverse piercing is a method of holding a corporation liable for the debts of a shareholder. ... When a court engages in reverse piercing, it imposes liability directly on a corporation. The idea of holding one entity liable for the debts of another flows from the traditional piercing theory, in which a shareholder is saddled with the debts of a corporation.

SEC v. Hickey, 322 F.3d at 1130; Loomis, 116 Nev. at 903, 8 P.3d at 846 (the "reverse" piercing situation involves a creditor reaching the assets of a corporation)(emphasis added); McCleary, 73 Nev. at 282 (for purposes of *execution* the timber company and the cattle company are to be regarded as identical)(emphasis added).

As such, a finding that Consolidated is the alter ego of the debtors only imposes liability directly on Consolidated thereby allowing Consolidated's assets to be used to satisfy debtors' debts. To the extent the debtor and Consolidated are one entity, they are only regarded as one for the purposes of execution. The court has already authorized this since it approved the trustee's motion to sell the assets of Consolidated for the benefit of the debtors' estate. There are no other assets that can be recovered pursuant to an alter ego theory.

CONCLUSION

For the foregoing reasons, the bankruptcy court's judgment is AFFIRMED.