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Court Applies Alter Ego Doctrine to Deny Motion to Dismiss For Lack of Personal Jurisdiction

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An Arizona district court recently relied on the alter ego doctrine to deny a motion to dismiss for lack of personal jurisdiction in a case involving breach of a partnership agreement and trademark infringement.

The plaintiff, Activator Methods International, Ltd. (Activator) and the defendant, Future Health Inc., an Iowa corporation (FHI), entered into a Shared Revenue Partnership Agreement (SRPA) allowing FHI to market Activator's software program, develop Activator's software application and use Activator's trademarks. FHI allegedly failed to pay the fees required under the SRPA and, as a result, Activator terminated the SRPA. Shortly thereafter, FHI ceased doing business and an identically named company incorporated in Delaware (FHD) was formed and became the successor in interest to FHI. The plaintiff brought an action against FHI, FHD, and Steven and Jane Doe Kraus, husband and wife. Steven Kraus was the chief executive officer (CEO) and majority shareholder of FHI and FHD and negotiated and signed the SRPA in Arizona. The Krauses moved to dismiss for lack of personal jurisdiction.

The Krauses conceded that the court had personal jurisdiction over FHI and FHD. The court determined that it had jurisdiction over the Krauses because the plaintiff pled facts sufficient to show that the Krauses were the alter ego of the FHI and FHD entities. To prevail under an alter ego theory, plaintiff must show (1) unity of control and (2) that observance of the corporate form would sanction a fraud or injustice. The court held that the plaintiff sufficiently alleged unity of control through the allegations that Steven Kraus owned or operated FHD and FHI and that the Krauses usurped funds of the corporation. In doing so, the court rejected the Krauses' argument that a party must be the sole shareholder to have unity of control over a corporation. Instead, the court held that there is unity of control when a "Defendant CEO 'disregards[s] corporate formalities'[,] ... use[s] corporate funds for his own ... personal purposes" and makes all "important management decisions," including those at issue.

Activator Methods International, Ltd. v. Future Health, Inc., 2012 WL 715629 (D. Ariz. March 6, 2012).

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