COURT OF APPEAL – SECOND DIST.
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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

8451 MELROSE PROPERTY, LLC et al., Plaintiffs and Respondents, v. YOUSEF AKHTARZAD et al., Defendants and Appellants.	B340673 (Los Angeles County Super. Ct. No. BC414854)

APPEAL from a judgment of the Superior Court of Los Angeles County, Daniel M. Crowley, Judge. Affirmed.

King & Spalding, Paul J. Watford; Wilson Sonsini Goodrich & Rosati, Julia Hu; Nemecek & Cole, Marshall R. Cole and Vikram Sohal for Defendants and Appellants.

Liner Freedman Taitelman and Cooley, Michael A. Taitelman, Steven E. Formaker; Greines, Martin, Stein & Richland, Robin Meadow and John J. Metzidis for Plaintiffs and Respondents.

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A commercial lease soured. The landlord won, and we affirmed, a significant money judgment against the tenant named in the lease. This appeal concerns the landlord's postjudgment efforts to add several individuals and a corporation as judgment debtors through the summary process that has emerged under Code of Civil Procedure section 187. (Subsequent references to section 187 are to this provision.) The individuals are assertedly the named tenant's silent partners in a belatedly discovered "one-for-all" family partnership. The corporation is assertedly the partnership's vehicle for real estate leasing ventures. The trial court, citing equitable concerns favoring the landlord, amended the judgment to add the individual partners and the corporation. These newly added judgment debtors appeal. We affirm.

BACKGROUND

A. Sina's Liability for Breach of Contract

8451 Melrose Property, LLC (Melrose) owns a commercial building on Melrose Avenue in West Hollywood, California. In 2008, Melrose, through its manager Jack Simantob, leased the building to Sina Akhtarzad. They agreed to an 11-year term with rent initially fixed at $55,000 per month.

After struggling to make productive use of the building, Sina, in January 2009, stopped paying rent. (We refer to Sina and his various family members by their first names for clarity.) Sina told Simantob he would pay $25,000, but nothing further. He warned Simantob against filing a lawsuit, threatening his attorneys would "crush" Simantob in court. Simantob, regaining possession of the building, saw it had been gutted. Stairs, drywall, electrical wiring and sockets, railings, ductwork, and bathroom fixtures had been removed. (*8451 Melrose Prop., LLC* *v. Akhtarzad* (May 28, 2020, B288963) [nonpub. opn.] (*Melrose II*).)

In June 2009, Melrose sued Sina for breach of contract and declaratory relief. Melrose prevailed at a bench trial in 2011, winning an $8,549,307.33 judgment, but Sina obtained reversal on appeal due to a change in the law of parol evidence that occurred while the appeal was pending. (*8451 Melrose Prop., LLC v. Akhtarzad* (July 30, 2013, B237052) [nonpub. opn.] (*Melrose I*).)

"On remand, the parties stipulated to a second trial in front of a referee," who conducted a 10-day trial. (*Melrose II, supra,* B288963 [nonpub. opn.].) After that trial, the referee issued a 139-page statement of decision in Melrose's favor. "The referee concluded Melrose's total damages were $10,555,837, consisting of $9,887,337 in unpaid rent and $668,500 to restore the [b]uilding. The referee also found Melrose made reasonable efforts to mitigate these damages. He awarded Melrose and Simantob attorney fees and costs. [¶] The trial court adopted the referee's statement of decision and entered judgment in favor of Melrose and Simantob" in 2018. (*Ibid.*) We affirmed. (*Ibid.*)

B. Bankruptcy Revelations and the Motion to Amend

Following the earlier, bench-trial judgment and another significant litigation loss in an unrelated commercial property dispute, Sina and his wife, Ramesh, filed for bankruptcy. (*In re Akhtarzad* (Bankr. C.D.Cal. 2011) No. 2:11-BK-61640.) The bankruptcy matter has its own lengthy history. In it, Melrose filed an adversary proceeding. Melrose argued Sina's debt should survive bankruptcy because Sina fraudulently induced the building lease by representing he had the means to perform it personally when he did not.

While conducting discovery for the adversary proceeding in 2023 — which had returned to life after the second judgment against Sina became final — Melrose and Simantob unearthed information about the business dealings of Sina and Ramesh, and of Sina's brothers and their wives (Kourosh and Shirin Akhtarzad, and Yousef and Shahpar Akhtarzad). Although Melrose and Simantob had known of Sina's relatives and various family-controlled business entities, they claim the 2023 discovery disclosures, discussed in depth below, newly showed that Sina and his brothers and their wives were acting as partners in a "one-for-all" partnership and that this partnership, not Sina, had secretly been the real tenant in the disputed lease. Melrose and Simantob, then, believed Sina had sought personal bankruptcy on a partnership debt as a ruse to divert attention from the partnership and to shield it from liability.

In December 2023, Melrose and Simantob sought amendment of the second judgment to add Sina's partners — Kourosh, Shirin, Yousef, and Shahpar — as well as the partnership's vehicle for property leasing, Amey Enterprise Inc. (Amey). Melrose and Simantob argued that "each partner in a general partnership is jointly and severally liable for partnership obligations" and asserted "Yousef Akhtarzad, Kourosh Akhtarzad, Shirin Akhtarzad and Shahpar Akhtarzad are proper debtors on a judgment based on a Partnership obligation." Though "the individual partners were not separately represented at trial," each was part of a single enterprise — the partnership — and all were thus "virtually represented."

C. Evidence on the Motion to Amend

We review the evidence before the trial court on the motion to amend judgment regarding who was involved with this ill-fated lease and when that information surfaced.

1. The Lease

Simantob, who signed the lease for Melrose, submitted a declaration in support of the motion. He had negotiated the lease solely with Sina. At the time of contracting, Sina did not disclose he was entering the lease on behalf of any family business and Simantob was unaware of Sina's family business or a partnership. Sina, who submitted a declaration in opposition to the motion, disagreed, averring he proposed contracting through one of the family partnership entities, which would have been Sina's standard business practice, but Simantob wished to contract with Sina personally.

The lease required a $330,000 initial payment, including four months' rent at $55,000 a month and a $110,000 security deposit. A check from a "Shirin Yousefzadeh Akhtarzad (SRS)" account covered this amount. The lease also required payment of property taxes and insurance premiums. A check for approximately $26,000 from an "Amey Enterprises DBA Olympic Collection" account covered those. At Sina's request, Simantob coordinated with a management company, using the name Nasa Group, to facilitate payment. Before breach of the lease, Amey, not Sina, sublet a portion of the Melrose building to Vera Wang Bridal House, LLC.

2. Earlier Bankruptcy Revelations

Early in the bankruptcy proceeding, in 2012, Sina and Ramesh filed documents illuminating their financial situation.

First, a schedule of personal property called for disclosure of the debtors' "interests in incorporated and unincorporated businesses" and "partnerships." The schedule lists 30 companies, including Amey, and denotes Ramesh, but not Sina, as having a minority interest in them. The list does not mention a partnership with the debtors' family members.

Second, a statement of financial affairs called for disclosure of "businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed." Though the debtors listed many of the companies listed in the previous document, Amey is not listed and neither is a partnership with the debtors' family members.

Third, the statement of financial affairs also called for disclosure of payments to insider creditors. In response, the debtors stated revenues from the listed real estate companies "are paid into a general account to pay mortgages, taxes, and other expenses of the [companies] every month" and noted Ramesh "is one of three named account holders on the account."

Also in 2012, a meeting of creditors occurred at which lawyers for Melrose, Simantob, and another creditor asked questions of Sina and Ramesh, and also of Kourosh, one of Sina's brothers. They discussed the multitude of family-related business entities. In discussing one of them, AhMen, Inc., Kourosh volunteered to provide answers as he was "familiar with the books and records of Ramesh and Sina." When asked if he was an accountant, Kourosh replied "No, just — my wife, she really is the partner." The examiner then proceeded to remind Kourosh of his interest in AhMen, Inc. and asked questions about the entity. Kourosh, addressing that entity's founding date, stated it was "formed in 1962; in 2006 Ramesh and other partners . . . bought the shares in the corporation." Ramesh's shares in AhMen, Inc. were pledged to Amey. This was done so Amey would pay for Sina's litigation expenses. For Amey, Sina would do "repairs" and "maintenance." Later in the hearing, Sina fielded questions about his financial relationship with his brothers. He replied, "[n]o" it was not "true that whenever you or your family, your brothers, your sister-in-laws, need money you basically take whatever money is available for your purposes." And "[n]o," he did not "share [his] money with [his] brothers at all times."

At another hearing around this time, which Melrose and Simantob briefly excerpted in a 2013 bankruptcy court filing, Sina addressed who determined who received what distributions from the family business entities. He was asked if he "ever make[s] that determination for any of these corporations, partnerships, or LLCs?" Sina responded "I'm not the only partner, but my wife is not the only partner. So the answer to your question is no." Later, Sina was again asked about distributions from the entities and stated his "partners" were involved. When asked who those were, Sina responded "[m]y brothers?"

These disclosures enabled Melrose and Simantob, also in 2013 and before the second trial in this matter, to request consolidation in the bankruptcy proceeding of the debtors' estate with the family business entities. Melrose and Simantob urged the existence of a "family business which consists of owning various limited liability companies and corporations." Melrose and Simantob contended members or shareholders of the entities treated them as "one unified mega-empire, within which they can shift funds around in a strategic attempt to avoid the creditors of any given entity or individual." And Melrose and Simantob noted the "SRS account was an account into which the income distributions from the [entities] of which Shirin, Ramesh and Shahpar are members were 'pooled' "and "funds from this account were then used to pay the personal expenses of the [d]ebtors."

These disclosures also prompted Melrose, in pursuing its breach-of-lease case in 2014 after reversal of the first judgment, to file a motion to amend its complaint to add new fraud causes of action that included Amey, AhMen, Inc., and Ramesh as defendants. The theory was that Sina fraudulently entered the lease with no intention of performing it, and that his wife and both entities, which she partially owned, conspired in and abetted the fraud. The trial court denied the motion to add these new fraud-based causes of action.

3. Later Bankruptcy Revelations

Reversal of the first judgment against Sina paused the adversary proceeding in bankruptcy against Sina, but that proceeding resumed after the second judgment. In response to interrogatories in the resumed proceeding, Sina, in early 2023, stated that while Simantob expected him to perform the lease personally, Sina's "belief and expectation was that the [l]ease would be administered through Amey." Sina, moreover, stated he had "access to funds (including income and financing proceeds of the partnerships)" as described in an attached declaration of William Mahanian, his accountant. Sina stated payments made on the lease "belonged equitably to [him] through his wife Ramesh" and through his "interests in family entities such as Amey and the SRS (Shirin Akhtarzad, Ramesh Akhtarzad, Shahpar Akhtarzad) bank account."

Mahanian, a CPA, had “been the accountant for Sina and Ramesh Akhtarzad, and all their business[] entities since 1988.” In his declaration, he explained that, since 1988, Sina and Ramesh have “conduct[ed] all their business activities, mostly in real estate, in partnerships with their other two brothers and their spouses.” Sina “is the only partner that is in charge of leasing, purchasing and sale of real estate. On [a] few occasions, if he purchased real estate in his personal name, he would subsequently transfer that real estate in a new LLC with him and his brothers and their spouse as the partners.” Sina and Ramesh rarely, if ever, “had any financial transactions that were outside of family members partnership, here called partners. All partners share all investments, income and expenses together. Each member had their own share and accounting based off their percentages of ownership.” Sina and Ramesh “always had access to all cash flows and funds from all entities at any time.” At the end of 2008, around when the lease was signed, the estimated fair market value of the partnership’s investments was over $400 million. Mahanian was able to meticulously calculate the share of partnership income due to Sina and Ramesh.

Depositions of Mahanian and Sina followed.

Mahanian stated Sina was part of a “one-for-all” family partnership that had existed for decades. To illustrate the partners’ intertwining, Mahanian explained, “it has happened that if one of these partners refinances their personal residence or sells something that is personal, the money would come back to the business to acquire more real estate.”

Sina answered questions about his relationship to the Melrose lease and his understanding of the partnership and Amey. Sina confirmed a partnership amongst him, his two brothers, and each of their wives had existed since 1979. When asked if he was personally Melrose's tenant, he responded he was, "[a]ccording to Jack [Simantob]" and "according to the lease." But Sina stated the lease was "part of a partnership business" and money needed to cover lease-related expenses would come from the partnership, *not* from him personally. And Sina did not personally pay to defend Melrose's lawsuit; the funds came from one of the family's business entities. Records from Amey show it paid numerous defense costs. From the beginning, "[t]he intention was this [lease] would be part of a family business." Further, Sina's intent when signing the lease was for Amey to act as the tenant and administer the lease, even though, again, Sina had signed the lease personally at Simantob's request. Internally, the family partnership referred to the lease as an Amey lease. Amey's tax filings show the lease under its auspices. Sina was Amey's manager, oversaw its leasing, and had check signing authority throughout 2008 and 2009.

In keeping with the family partnership's practices, the SRS account paid lease expenses. The SRS account was a "mother account" or "handling account" that facilitated partnership investments and distributions to partners and paid partnership expenses, including for Amey. The SRS account ledger showed payments to and from Amey. Secretary of State documents showed Amey's officers and directors consisted of the namesakes of the SRS account: Shirin, Ramesh, and Shahpar.

4. Akhtarzad Declarations About the Partnership

Sina and his family, responding directly to the motion to amend judgment, reaffirmed the partnership. Sina's declaration in opposition to the motion states: "We are all partners in what we commonly refer to as a Family Partnership. . . . The partners share the investments, income and expenses of the Family Partnership, and each of the partners has his or her own share of the Family Partnership. Ramesh and I hold, on average, at least 33% of the Family Partnership, ranging between 20% and 50% of any single asset. This is because there are multiple entities within the Family Partnership, and the family members (the partners) have different interests in the various entities as new assets are acquired." When the partnership enters leases, it is Sina's "common business practice to enter into such commercial lease agreements through Amey," which "is part of the Family Partnership." Sina averred, however, "neither my brothers nor their wives played any substantive role in [the] litigation" with Melrose.

Sina's brothers and in-laws — Kourosh, Shirin, Yousef, and Shahpar — all submitted declarations agreeing a family partnership existed separate and apart from the various companies that conduct "[m]ost" of the partnership's business. They each declared "[t]he partners share the investments, income and expenses of the Family Partnership, and each of the partners has his or her own share of the Family Partnership." They each also acknowledged the judgment creditors' contention that " 'all family member partners had access to all funds in all entities for any reason without having any negative effect on the operations of any of the entities' " and stated in response that "each of the 'inter-entity' loans and advances were properly documented and accounted for in the books and records for the LLCs comprising the Family Partnership." Each partner was aware of the lease litigation, but none materially participated in it, or in the lease's negotiation. None selected the attorneys who represented Sina and none made, or was asked to make, material decisions regarding the lawsuit.

D. Superior Court Grants Amendment

Following briefing, written evidentiary submissions, and oral arguments, the superior court amended the judgment in favor of Melrose and Simantob to name, jointly and severally, Kourosh, Shirin, Yousef, Shahpar, and Amey as debtors.

In a written order, the court found the Akhtarzads had indeed formed a "one-for-all" partnership. The partners "acted in concert to acquire and manage real property," and they intended the lease with Melrose to "be part of that enterprise." Though "Sina was the nominal tenant" on the lease, he shared his partners' intentions and acted "as an agent of the [p]artnership" as he typically does in real estate matters. Amey, of which Sina was the sole manager, was a "[p]artnership entity" meant to perform the lease, as it had paid "[p]artnership expenses," such as taxes and insurance, and had sublet a portion of the premises. Sina oversaw the litigation for the partnership and the partnership paid for the litigation. "While the individual partners were not separately represented at trial, the Partnership itself was virtually represented through Sina, one of its members. Each of the partners was part of a single enterprise: the 'one-for-all' Partnership." Sina litigated "vigorous[ly], contesting liability on the merits of the case through two trials and two appeals," and his interests were "the same as the interests of the Partnership and Amey." He thus "virtually represented" the partnership, "and by extension, its individual members," as well as Amey.

After making these findings, the superior court rejected the would-be debtors' assertion of laches. They had "not shown an unreasonable delay in bringing the motion to amend the judgment," as Melrose and Simantob acted "within a few months" of discovering the " 'one-for-all' Family Partnership." Nor had the would-be debtors shown prejudice from their delayed addition to the judgment.

The newly added judgment debtors appealed. Amidst briefing, they moved for judicial notice of documents not before the trial court. We previously deferred that motion and now deny it. (*In re Marriage of Brewster & Clevenger* (2020) 45 Cal.App.5th 481, 498 ["The appellate court does not take judicial notice of matters not considered by the trial court, absent exceptional circumstances"].)

DISCUSSION

I. Section 187

The newly added judgment debtors challenge their addition to the judgment, which the trial court ordered pursuant to Code of Civil Procedure section 187.

Section 187 grants courts "all the means necessary to" effect their jurisdiction. (§ 187.) California courts agree this grant of authority permits a court to " ' "amend its judgment at any time so that the judgment will properly designate the real defendants." ' " (*Greenspan v. LADT LLC* (2010) 191 Cal.App.4th 486, 508 (*Greenspan*); see *Motores de Mexicali, S. A. v. Superior Court of Los Angeles County* (1958) 51 Cal.2d 172, 175 (*Motores*) [noting use of section 187 to add judgment debtors].) "The addition of a new party as judgment debtor stems from the concept of the alter ego doctrine, which is that an identity exists between the new party and the original party, whose participation in the trial leading to the judgment represented the newly added party." (*Misik v. D'Arco* (2011) 197 Cal.App.4th

1065, 1072.) A court, then, " ' " 'is not amending the judgment to add a new defendant but is merely inserting the correct name of the real defendant.' " ' " (*Greenspan*, at p. 508.)

"[E]ven if all the formal elements necessary to establish alter ego liability are not present, an unnamed party may be included as a judgment debtor if 'the equities overwhelmingly favor' the amendment and it is necessary to prevent an injustice." (*Carolina Casualty Ins. Co. v. L.M. Ross Law Group, LLP* (2012) 212 Cal.App.4th 1181, 1188–1189 (*Carolina Casualty*), quoting *Carr v. Barnabey's Hotel Corp.* (1994) 23 Cal.App.4th 14, 20–23 (*Carr*).) Although authority from the same year as *Carr* states an alter ego relationship must be shown (*Triplett v. Farmers Ins. Exchange* (1994) 24 Cal.App.4th 1415, 1420, section 187's broad grant of authority contemplates no such limitation. No court, meanwhile, in the three decades since *Carr* has advanced *Triplett's* more constrained approach to deny section 187 relief when it would otherwise be appropriate. (See *In re Levander* (9th Cir. 1999) 180 F.3d 1114, 1122, fn. 11; cf. *Mesler v. Bragg Management Co.* (1985) 39 Cal.3d 290, 301 ["The essence of the alter ego doctrine is that justice be done"].)

Whether the relationship inviting section 187's application is alter ego or an equitable analog, courts have allowed amendment if a plaintiff meets its burden to show: (1) the party to be added as a judgment debtor had control of the underlying litigation and was virtually represented in that proceeding; (2) there is such a unity of interest and ownership that the separate personalities of the party already on the judgment and the party to be added do not in reality exist; and (3) an inequitable result would follow if the acts of the party already on the judgment were treated as its acts alone. (*Highland Springs Conference &*

Training Center v. City of Banning (2016) 244 Cal.App.4th 267, 280 (*Highland Springs*); *Relentless Air Racing, LLC v. Airborne Turbine Ltd. Partnership* (2013) 222 Cal.App.4th 811, 815–816 (*Relentless*); *Carolina Casualty*, *supra*, 212 Cal.App.4th at p. 1194; *Greenspan*, *supra*, 191 Cal.App.4th at pp. 508, 509, 511; *Carr*, *supra*, 23 Cal.App.4th at p. 21.)

The first requirement, "that the proposed judgment debtors have had control of the underlying litigation and have been virtually represented," assures that section 187 places liability only at the feet of those who sufficiently had their day in court. (*Greenspan*, *supra,* 191 Cal.App.4th at p. 509; *id.* at p. 517 ["We must also keep in mind that section 187 applies only if the parties to be added as judgment debtors had control of the underlying litigation and were virtually represented"].) The remaining requirements mirror those that establish alter ego, and so assure that section 187 does not reach beyond the "real" defendants. (*Id*. at pp. 508–509.) If a judgment creditor does not invoke alter ego to impose section 187 liability, we look for its equitable "*equivalent*." (*Cam-Carson, LLC v. Carson Reclamation Authority* (2022) 82 Cal.App.5th 535, 550 (*Cam-Carson*).) In sum, section 187 liability follows from a nonparty's sufficient litigation control and sufficient relationship to a judgment debtor. (Cf. *Misik v. D'Arco*, *supra*, 197 Cal.App.4th 1065, 1072 [section 187 applies to "an alter ego who had control of the litigation"].) When section 187's requirements are met, "[n]o statute of limitations applies" so equity can be done. (*Highland Springs*, *supra*, 244 Cal.App.4th at p. 287.)

While caution is often urged before disregarding corporate forms, the "greatest liberality" is often encouraged in allowing amendments under section 187, meaning courts exercise their discretion "under section 187 with a particular eye towards promoting justice." (*JPV I L.P. v. Koetting* (2023) 88 Cal.App.5th 172, 190; see also *Misik v. D'Arco*, *supra*, 197 Cal.App.4th at p. 1073.) We review a trial court's decision to add a judgment debtor for an abuse of discretion. (*Carolina Casualty*, *supra*, 212 Cal.App.4th at p. 1189.) We review the court's fact findings for substantial evidence (*ibid.*), but we review independently questions of law regarding section 187's scope (see *Phillips, Spallas & Angstadt, LLP v. Fotouhi* (2011) 197 Cal.App.4th 1132, 1142).

We next address relevant background principles of partnership, then turn to whether the trial court could add Amey to the judgment, and finally address the individual partners.

II. Partnership Principles

A. Partnership and Partner Liability

The original and new individual judgment debtors, Sina and his relatives, are partners in a partnership. Amey is alleged to be an adjunct of the partnership. Principles of partnerships, then, are relevant.

Generally, "the association of two or more persons to carry on as coowners a business for profit forms a partnership." (Corp. Code, § 16202, subd. (a).) A partnership can arise from a written agreement or be implied from the partners' acts. (*Eng v. Brown* (2018) 21 Cal.App.5th 675, 694.) "A partnership is an entity distinct from its partners." (Corp. Code, § 16201.) "Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority." (*Id.*, § 16301, subd. (1).)

"A partnership or other unincorporated association, whether organized for profit or not, may sue and be sued in the name it has assumed or by which it is known." (Code Civ. Proc., § 369.5, subd. (a); accord, Corp. Code, § 16307, subd. (a).) "A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership." (Corp. Code, § 16305, subd. (a).) Generally, "all partners are liable jointly and severally for all obligations of the partnership." (*Id.*, § 16306, subd. (a).) Commentators view this last provision, with roots in the Revised Uniform Partnership Act, as reflecting an "aggregate theory" of partnership, even as other portions of the revised act, and of California partnership law, adopt the "entity theory" of partnership. (Haberbush, *Note and Comment: Be Careful What You Wish For: The Unforeseen Repercussions of the IRS' Desired Outcome in* United States v. Galletti *on the IRS' Ability to Collect Partnership Taxes Against General Partners* (2011) 32 Whittier L.Rev. 533, 564.)

Several provisions address the practicalities of obtaining relief from a specific partner. Section 369.5, subdivision (b), of the Code of Civil Procedure states "[a] member of [a] partnership or other unincorporated association may be joined as a party in an action against the unincorporated association. If service of process is made on the member as an individual, whether or not the member is also served as a person upon whom service is made on behalf of the unincorporated association, a judgment against the member based on the member's personal liability may be obtained in the action, whether the liability is joint, joint and several, or several." (Code Civ. Proc., § 369.5, subd. (b).) Personal liability under this provision depends on being joined in the suit and served. (*Fazzi v. Peters* (1968) 68 Cal.2d 590, 596 (*Fazzi*) [discussing section 388, the predecessor to section 369.5].)

Additionally, the Corporations Code instructs that "[a] judgment against a partnership is not by itself a judgment against a partner" and "[a] judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner." (Corp. Code, § 16307, subd. (c); see *Rappaport v. Gelfand* (2011) 197 Cal.App.4th 1213, 1231, fn. 14.) Moreover, "[a] judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless" one of five conditions applies. (Corp. Code, § 16307, subd. (d).) Those conditions are: "(1) A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part. [¶] (2) The partnership is a debtor in bankruptcy. [¶] (3) The partner has agreed that the creditor need not exhaust partnership assets. [¶] (4) A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers. [¶] (5) Liability is imposed on the partner by law or contract independent of the existence of the partnership." (*Ibid.*)

Partners, in sum, are liable for partnership debts, but partners and their partnership are distinct in that a judgment against one partner or the partnership does not necessarily turn other partners into judgment debtors and expose them to individual liability.

B. Partnership, Preclusion, and Due Process

Features of partnership liability are revealed by our state's law of preclusion — that is, the law that tells us whether claims or issues arising in one action can be relitigated in another. "In accordance with due process," preclusion "can be asserted only against a party to the first lawsuit, or one in privity with a party." (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824 (*DKN Holdings*); see *JPV I L.P. v. Koetting*, *supra*, 88 Cal.App.5th at p. 193.) And the requirement of due process that limits preclusion's reach also restrains a court's power when amending judgments under section 187. (*Mac v. Minassian* (2022) 76 Cal.App.5th 510, 520 [the requirement for section 187 amendment " 'that the new party had controlled the litigation' " exists " 'to satisfy due process concerns' "].)

As one instance in which partnership law, privity, and due process intersect, take *Dillard v. McKnight* (1949) 34 Cal.2d 209 (*Dillard*). There, our Supreme Court rejected the notion "that a judgment against one partner in an action brought against him personally on a tort arising out of the partnership business is res judicata when the same issues are raised in subsequent litigation against another partner." (*Id.* at p. 214; see *DKN Holdings*, *supra*, 61 Cal.4th at p. 825 [approving of *Dillard* as holding that "business partners are not in privity for purposes of preclusion"];

accord, *Patel v. Crown Diamonds, Inc.* (2016) 247 Cal.App.4th 29, 39.)

In *Dillard*, the plaintiffs sued McKnight, the driver of a car that fatally struck their son, and Wilcox, the driver's employer. (*Dillard*, *supra*, 34 Cal.2d at p. 212.) After a first trial, the plaintiffs secured a judgment against both defendants, premised in part on a finding that McKnight had acted within the scope of his employment with Wilcox. (*Ibid.*) "As the result of certain evidence adduced upon the [first] trial, plaintiffs claim[ed] to have learned for the first time the identity of" two partners of Wilcox: Bower and Thorley. (*Ibid.*) The plaintiffs served process on the new partners and substituted them for "Doe" defendants in an amended complaint. (*Ibid.*) In a second trial, the court found McKnight caused the collision but was *not* acting for his employer and entered judgment for the added partners. (*Ibid.*)

The plaintiffs appealed, contending the employment finding underlying the first judgment should have applied, under preclusion principles, against the added partners. (*Dillard*, *supra*, 34 Cal.2d at p. 212.) If the added partners were not parties to the first trial, argued the plaintiffs, they were Wilcox's privies. (*Id.* at p. 213.) In rejecting this argument, the Supreme Court reaffirmed the general rule "that partners are not in such privity with one another that a judgment against one partner in an action brought against him personally on a tort arising out of the partnership business is res judicata when the same issues are raised in subsequent litigation against another partner." (*Id.* at p. 214.) The Court reiterated " 'that in no case will a judgment entered after service on less than all the partners be given the effect of a personal judgment against partners not actually served.' " (*Ibid.*) "If the rule were otherwise a partner would be required to discover at his peril any action against his copartner that might conceivably relate to the partnership business and seek to intervene therein. On the second trial the only issue that would be open would be the nature of his relationship to the party sustaining the adverse judgment. Such procedure would deprive him of valuable rights contrary to 'the mandate of due process of law' — that no person can be affected by a hearing or adjudication of a court of justice without his voluntary appearance or affording to him by means of the service of process an opportunity to appear and contest the claim that may be made against him." (*Ibid.*) The "assertion that 'service upon one partner, is service upon all . . . is not the rule in this State;' " rather, " '[t]o sustain a judgment against a defendant, he must be served with process, or brought into Court through some of the forms of law.' " (*Id.* at pp. 214–215.) *Dillard* reached these conclusions despite acknowledging the rule, now set forth in Corporations Code section 16306, subdivision (a), that partners bear "joint and several liability on a partnership matter." (*Id.* at p. 217; see *DKN Holdings*, *supra*, 61 Cal.4th at p. 826 ["[J]oint and several obligors are not considered to be in privity for purposes of issue or claim preclusion"].)

Dillard, furthermore, rejected the plaintiffs' argument that the absent partners' asserted exercise of control in the first trial should alter the outcome. (*Dillard*, *supra*, 34 Cal.2d at p. 217.) The plaintiffs contended "from the record it may be inferred that defendants Bower and Thorley, through their correspondence with defendant Wilcox' counsel at the time of the first trial, knew of plaintiffs' cause of action as involving the responsibility of the partnership and so were in an equal position of authority to exercise control over the conduct of such proceedings" but "chose to stay 'in the background' and let defendant Wilcox, as agent of the partnership (Civ. Code, § 2403) 'bear the brunt of the defense,' so that 'they are now estopped to deny the force and effect of the [first] judgment.' " (*Dillard*, *supra*, 34 Cal.2d at pp. 216–217.) The plaintiffs claimed "the situation is analogous to that of an 'undisclosed principal,' who is bound by a judgment in a prior action rendered against his agent on the identical issue when raised in subsequent litigation." (*Id.* at p. 217.)

Responding to this argument, the Supreme Court recognized that nonparties who control litigation could be bound by it. (*Dillard*, *supra*, 34 Cal.2d at p. 216; see *Krofcheck v. Ensign Co.* (1980) 112 Cal.App.3d 558, 568 (*Krofcheck*); *JPV I L.P. v. Koetting*, *supra*, 88 Cal.App.5th at pp. 178, 193–194 [finding privity between LLCs and their managing members when those members controlled litigation]; *Valley Nat'l Bank v. A.E. Rouse & Co.* (9th Cir. 1997) 121 F.3d 1332, 1337 [preclusion could apply to "an unnamed, unserved partner who participates in a defense of the partnership"]; see also Code Civ. Proc., § 1908, subd. (b) ["A person who is not a party but who controls an action, individually or in cooperation with others, is bound by the adjudications of litigated matters as if he were a party if he has a proprietary or financial interest in the judgment or in the determination of a question of fact or of a question of law with reference to the same subject matter or transaction"].) But the court, first, faulted the plaintiffs for not raising the issue of control in the trial court, thereby denying the defendants the opportunity to contest their control. (*Dillard,* at p. 217.) The defendants "might have been able to prove that they did not participate in the conduct of the prior defense or agree to have their copartner . . . conduct it for them." (*Ibid.*) The court also rejected preclusion arising from the "mere knowledge of one partner that his copartner is being sued on an alleged partnership transaction." (*Ibid.*) Partnership liability and agency principles, standing alone, could not surmount the court's due process concerns. (*Dillard*, at pp. 217–218.)

Courts are similarly hesitant to give preclusive effect to judgments against partnerships in subsequent efforts to secure relief against partners. In *Krofcheck*, the creditor on a Utah judgment against a partnership sought to enforce that sister-state judgment in California against a general partner assumed to have controlled the Utah litigation. (*Krofcheck*, *supra*, 112 Cal.App.3d at pp. 560, 567.) The Court of Appeal rebuffed these efforts. (*Id.* at pp. 563–564.) Whether under Utah or California law, a judgment against a partnership was not against an unnamed, unserved partner. (*Id.* at pp. 564–566, citing *Fazzi*, *supra*, 68 Cal.2d 590, 592–598, and *Dillard*, *supra*, 34 Cal.2d at p. 214). *Fazzi* had reiterated the "elementary common law principle . . . that a judgment may not be entered either for or against one not a party to an action or proceeding," and held an individual judgment against a partner could not be rendered against a partner not joined in a suit against a partnership. (*Fazzi*, at pp. 592, 594, 597.) The court in *Krofcheck*, recognizing that a partner who controlled the underlying litigation against a partnership might be in privity with the partnership for purposes of issue preclusion, concluded the proceeding to enforce the Utah judgment instead sought to invoke claim preclusion. The court concluded this aspect of res judicata was unavailable in the pending sister-state enforcement proceeding. (*Krofcheck*, at pp. 566–568.)

It has been said, drawing on the Restatement Second of Judgments (1982) (Restatement), that the relationships between "partners and their partnerships" are amongst those traditional legal relationships that give rise to privity and preclusion. (*Headwaters Inc. v. United States Forest Serv.* (9th Cir. 2005) 399 F.3d 1047, 1052–1053, citing Rest.2d Judgments, §§ 43–61.) But the Restatement's discussion of partners and partnerships underscores California's non-automatic approach.

According to the Restatement, "[a] judgment in an action by an injured person against a partner upon an obligation or liability incurred in the course of partnership business [¶] . . . [¶] renders the property of the partnership subject to execution to satisfy the judgment but is not otherwise binding on a partner who was not a party to the action unless he controlled or participated in controlling the defense of the action, or was given notice of an opportunity to defend the action." (Rest.2d Judgments, § 60(1)(b)(ii), p. 106; cf. *id.* § 59(3)–(5), pp. 94–95 [describing a litigation control requirement for binding individuals associated with a corporation].) "[A] partner who has been served with process can defend the action [on] behalf of the partnership . . . . A judgment for the plaintiff is binding upon unserved partners to the extent of the partnership property, which thereupon is subject to execution to collect the judgment. To this extent, the partnership is in effect treated as an entity when one of its members is made a defendant." (Rest.2d Judgments, § 60, com. a, p. 109.)

Thus, "[a]lthough all general partners are substantively liable for obligations incurred by other partners in the course of the business, this does not signify that a judgment establishing such an obligation is binding upon a partner who was not individually a party to the adjudication. A partner who has been made a party defendant represents himself and other partners to the extent of their interest in partnership property; he does not represent unjoined partners for the purpose of establishing their liability beyond their investment as embodied in partnership property." (Rest.2d Judgments, § 60, reporter's notes, p. 113.) In some jurisdictions, a judgment against a partnership "may have evidentiary value in a subsequent action to establish the personal liability of unjoined partners. In these jurisdictions, an unjoined partner may be summoned after judgment to show cause why he should not be made liable under the judgment. The burden of proof on the question of liability is then shifted from plaintiff to the newly joined partner. Aside from this possibility, however, a partner who has not been served as a defendant is not bound beyond his interest in the partnership property." (Rest.2d Judgments, § 60, com. a, p. 109; cf. *14th RMA Partners, L.P. v. Reale* (2d Cir. 1996) 100 F.3d 278, 280–281 ["a subsequent suit . . . is only for the purpose of affording the partner the opportunity to contest" the partner's status with respect to the partnership]; *Dayco Corp. v. Fred T. Roberts & Co.* (1984) 192 Conn. 497, 505 [a partner who controlled arbitration and a partner without involvement were both bound individually in a second suit on the underlying partnership liability].)

California does not offer this more direct route. The limitations on individual partner liability, according to the Restatement's reporter's notes, are viewed by California and some like-minded states as "required by due process. Thus, it has been said that it would be a denial of due process if a judgment based on service of process on a partner were to result in conclusive determination of the personal liability of a partner who was not personally served." (Rest.2d Judgments, § 60, reporter's notes, pp. 114–115, citing *Dillard*, *supra*, 34 Cal.2d 209; accord, *Nisenzon v. Sadowski* (R.I. 1997) 689 A.2d 1037, 1050.) Though the Restatement observes the contrary view is possible — that is, a partner could be viewed as the agent of all his partners in all aspects of litigation — it concludes this is not generally so "as a matter of modern common law." (Rest.2d Judgments, § 60, reporter's notes, p. 115.)

III. Amey

We turn to the addition of Amey, the partnership's vehicle for leasing, as a judgment debtor. We start with Amey's relationship to Sina. And we probe, in terms deriving from the alter ego doctrine, whether the evidence permitted trial court findings that there was a unity of interest and ownership such that the separate personalities of Sina and Amey did not in reality exist, and that an inequitable result would follow if Sina's acts were treated as his alone. (See *Highland Springs*, *supra*, 244 Cal.App.4th at p. 280.)

Although Melrose has not asserted a classic alter ego relationship between Sina, the partnership, and Amey, section 187, as noted, can reach the equitable equivalents of alter ego (*Cam-Carson*, *supra*, 82 Cal.App.5th at p. 550) who should be deemed the real defendants (*Greenspan*, *supra*, 191 Cal.App.4th at p. 508). And alter ego, it turns out, is sometimes viewed as a means to treat potential judgment debtors as if they were in partnership. "Where the alter ego theory is proved, corporation owners are 'essentially partners operating through a corporate form, and they are liable for its debts.' (*Hiehle v. Torrance Millworks, Inc.* (1954) 126 Cal.App.2d 624, 630.)" (*Minn. Mining & Mfg. Co. v. Superior Court* (1988) 206 Cal.App.3d 1025, 1028

(*Minn. Mining*).) Partners, after all, are, by statute, agents of the partnership, bind the partnership in partnership matters, and are jointly and severally liable for partnership debts. (Corp. Code, §§ 16301, subd. (1), 16306, subd. (a).) And a partnership is liable for the acts of its partners. (*Id.*, § 16305, subd. (a).) These are statutory commands beyond the sometimes blurry realm of equity. The Legislature has determined that a partnership has the sort of unity of interest with its partners that can support partnership liability. Thus, a single partner "may, by appearance, bind the firm as well as himself, both as a copartner and individually." (*Promotus Enterprises, Inc. v. Jiminez* (1971) 21 Cal.App.3d 560, 565; cf. *Poswa v. Jones* (1913) 21 Cal.App. 664, 669 ["the judgment against the individual members of a firm may be enforced against the partnership assets"].)

Here, the evidence supported the trial court treating the partnership as the real defendant. Sina conceded the lease was "part of a partnership business" and money needed to cover lease-related expenses would come from the partnership, *not* from him personally. When the partnership enters leases, it is Sina's "common business practice to enter into such commercial lease agreements through Amey," which is entirely owned by, and "part of[,] the Family Partnership." Internally, the partnership referred to the lease as an Amey lease. Amey's tax filings show the lease under its auspices. Sina was Amey's manager, oversaw its leasing, and had check signing authority at the time of the lease with Melrose. Amey, not Sina, sublet a portion of the Melrose building to Vera Wang Bridal House, LLC, on behalf of the partnership.

The evidence also supported the trial court's finding that the partnership controlled the litigation. (*Highland Springs*, *supra*, 244 Cal.App.4th at p. 280; *NEC Electronics Inc. v. Hurt* (1989) 208 Cal.App.3d 772, 778–780 (*NEC*).) The partnership financed the litigation and paid the lawyers. The partnership entrusted Sina, the partner who appeared in the litigation but did not finance it, with managing the partnership lease being litigated. More than that, Sina vigorously litigated the dispute through two trials on the merits and two appeals. We discern no way, and have been pointed to none, in which Sina's litigation efforts shorted the partnership. The partnership, via its agent Sina, offered a potent, if unsuccessful defense. (*NEC*, at p. 781.)

The evidence, furthermore, permits viewing Amey as a mere instrumentality and effective alter ego extension of the partnership. (See *Gordon v. Aztec Brewing Co.* (1949) 33 Cal.2d 514, 520–523.) In *Gordon*, our Supreme Court approved "the trial court's determination that as a matter of law [a] corporate defendant was the alter ego of [a] partnership" (*id.* at p. 523, italics omitted) and the trial court's jury instruction that " 'if one is liable, both are liable' " (*id.* at p. 521). In that case, "[t]he partners were the same persons as the stockholders in the corporation." (*Ibid.*; see also *Ukegawa Bros. v. Agric. Labor Relations Bd.* (1989) 212 Cal.App.3d 1314, 1324 ["It is clear the corporation is the alter ego of the partnership and was not denied the opportunity to obtain review of the 1982 order"]; cf. *In re Levander*, *supra*, 180 F.3d at p. 1123 [adding partnership to a judgment against a corporation "raises no due process concerns"].) "Alter ego liability 'is not limited to the parent-subsidiary corporate relationship; rather, "under the single-enterprise rule, liability can [also] be found between sister [or affiliated] companies." ' " (*Cam-Carson*, *supra*, 82 Cal.App.5th at p. 550, quoting *Troyk v. Farmers Group, Inc.* (2009)

171 Cal.App.4th 1305, 1341; see *Greenspan*, *supra*, 191 Cal.App.4th at p. 512.) Amey is a partnership vehicle owned and controlled by members of the family partnership to conduct partnership leasing. There are no outside shareholders. While Amey argues it is not *Sina's* alter ego, it does not contest its relationship to the partnership or the trial court's conclusion that Amey was a "partnership entity."

While, as Amey notes, some courts have raised concerns about "outside reverse veil piercing" — in which an outsider to a corporation seeks to hold a corporation liable for an individual shareholder's debts — those concerns are inapplicable to the partnership scenario before us. (See *Curci Investments, LLC v. Baldwin* (2017) 14 Cal.App.5th 214, 222, citing *Postal Instant Press, Inc. v. Kaswa Corp.* (2008) 162 Cal.App.4th 1510.) "Outside reverse piercing can harm innocent shareholders and corporate creditors, and allow judgment creditors to bypass normal judgment collection procedures. Legal theories (such as agency or respondeat superior) and legal remedies (such as claims for conversion or fraudulent conveyance) adequately protect judgment creditors without the need to distort theories of corporate liability." (*Postal Instant Press, Inc.*, at p. 1513.) With a general partnership debt, however, the innocent shareholder concept is inapt and there is no need for veil piercing of the sort applicable to corporations. (See *Minn. Mining*, *supra*, 206 Cal.App.3d at p. 1028 [discussing how alter ego allows treating corporation owners as partners].) Instead, the general rule is that a "partnership is liable for . . . a wrongful act . . . of a partner" (Corp. Code, § 16305, subd. (a)) and "partners are liable jointly and severally for all obligations of the partnership" (*id.*, § 16306, subd. (a)).

Despite Amey's arguments to the contrary, the trial court's findings, in the exercise of its discretion under section 187, that the equities favored amendment and that Melrose was sufficiently diligent in seeking amendment were adequately supported. (See *Highland Springs*, *supra*, 244 Cal.App.4th at pp. 280, 282, 289 [a party opposing amendment may raise laches, which requires the moving party's unreasonable delay plus either that party's acquiescence or prejudice to the opposing party].)

The evidence permitted the trial court's conclusions, whether or not it compelled them, that Sina hid the partnership and its involvement in the Melrose lease and contrivedly sought personal bankruptcy relief for an obligation he and his partners secretly viewed as arising out of partnership activities, thereby shielding the partnership, and ultimately himself, from exposure. The trial court could reject Sina's claim of disclosure and credit the evidence of secrecy. (*G & W Warren's, Inc. v. Dabney* (2017) 11 Cal.App.5th 565, 581.) Though Melrose thought it had a lease with Sina personally and thought Sina's own wealth made him a reliable lessee, Sina and the partnership knew otherwise. Sina kept this to himself through the lease litigation and the early stages of the lengthy bankruptcy that followed. Then years later, when Sina believed it was in his interest to do so, he revealed the lease was a partnership lease and revealed his apparent wealth was partnership wealth then beyond the judgment creditors' reach. Viewing the facts this way, the trial court, in its discretion, could conclude it would be inequitable for the partnership, through its leasing vehicle, Amey, to not face liability for its previously undisclosed debt for reasons that sufficiently parallel those supporting liability against the alter ego of a corporation. (Cf. *Carr*, *supra*, 23 Cal.App.4th at pp. 22–

23 [allowing amendment when "the named defendants conducted themselves as though they were the proper defendants" and sought "to shield the entity which should have been named"]; *Relentless*, *supra*, 222 Cal.App.4th at p. 816 [finding inequity when new judgment debtors and old judgment debtor entity were "one and the same," the new debtors paid personal debts with entity funds, and it was "highly unlikely" the entity would have assets to satisfy the judgment].)

To be sure, the earlier bankruptcy proceedings revealed a wide-ranging family business in which family members had stakes in a multitude of entities. But the trial court could conclude those proceedings did not reveal the true nature of Sina's lease nor the existence of the overarching partnership holding that lease. It may have seemed to Melrose and Simantob, in seeking consolidation earlier in the bankruptcy proceeding, that the Akhtarzads had a "mega empire" of entities and could conspire to move personal assets to dodge creditors and accrue income during bankruptcy. But the trial court could have concluded that moving personal assets through a series of discrete entities to shield personal debts and debts of those entities did not, in this case, necessarily portend the overarching partnership and its control of the lease. Sina's statement of financial affairs in the bankruptcy listed entities, but no partnership. It seems, also, the bankruptcy consolidation papers' failure, on both sides, to mention the partnership is plausibly evidence that such an arrangement was not then disclosed, known, or suspected rather than evidence compelling a finding that Melrose lacked diligence.

Melrose was aware of Amey's existence as a sometime source of funds for Sina. But, again, without knowing about the overarching partnership and its interest in the lease with Melrose, it was plausible for Melrose and Simantob to have overlooked the significance of a single $26,000 check from Amey for tax and insurance payments on the lease. And if Melrose and Simantob later viewed Amey as a family business entity tied to Sina's wife, that did not command the conclusion that Amey was, after all, effectively a party to the lease with Melrose on behalf of a then-unknown partnership.

Ultimately, we conclude Amey's addition as a judgment debtor under section 187 was, given the evidence, within the broad discretion we afford the trial court in these matters.

III. Individual Partners

If Amey, as the partnership's stand in, is a proper defendant, what of the individual partners?

As noted, a partner is jointly and severally liable for partnership debts. (Corp. Code, § 16306, subd. (a).) The individual partners, here, authorized Sina to conduct partnership leasing business as their agent. (See *id.*, § 16301, subd. (1).) Just as Sina and the undisclosed partnership shared a unity of interest akin to alter ego that permitted section 187 amendment to add Amey, so did Sina, the undisclosed partnership, and the undisclosed individual partners.

As noted earlier, the very goal of the alter ego doctrine is to treat corporation owners as partners. (See *Minn. Mining*, *supra*, 206 Cal.App.3d at p. 1028.) "[I]t is settled that two or more shareholders of a corporation may be liable as principals *or partners* under the *alter ego* principle." (*Riddle v. Leuschner* (1959) 51 Cal.2d 574, 581, first italics added [two family members who owned corporate shares treated as alter egos]; see also *Rowe v. Exline* (2007) 153 Cal.App.4th 1276, 1284 [under the alter ego principle, an "entity is considered an association of individuals"].) Membership in a single business enterprise has also been said to potentially subject a nonparty member to a section 187 motion to amend. (*Toho-Towa Co., Ltd. v. Morgan Creek Productions, Inc.* (2013) 217 Cal.App.4th 1096, 1107–1108.) Like alter ego, " '[t]he "single-business-enterprise" theory is an equitable doctrine applied to reflect *partnership-type* liability principles.' " (*Id.*, at p. 108, italics added; cf. *Weiner v. Fleischman* (1991) 54 Cal.3d 476, 482 [a joint venture, which shares features with a partnership, is " 'an undertaking by two or more persons jointly to carry out a *single business enterprise* for profit,' " italics added].) Indeed, a partner has the kind of relationship with a partnership that potentially permits section 187 amendment. In *Carolina Casualty*, *supra*, 212 Cal.App.4th at p. 1183, the court affirmed the amendment of a judgment to add a dissolved law firm's sole equity partner to a judgment against the firm. And in *Relentless*, *supra*, 222 Cal.App.4th at pp. 813, 815, the court reversed a trial court's refusal to add a limited partnership's two individual members as judgment debtors.

The equitable concerns that permitted Amey's addition to the judgment pertain to the individual partners as well. The partners, like the partnership, reaped the benefit of letting Sina treat the partnership debt as his own while sheltering in the background. Meanwhile, the evidence permitted the conclusion that in this decades-old "one-for-all" partnership, the partners mingled seemingly personal and partnership transactions, pooling their investments, income, and expenses. The partners had access to partnership cash flows at all times. One partner's refinanced home would provide funds for further investments.

Returns from those investments, such as the Melrose lease, would enable still others. (Cf. *Triyar Hospitality Management, LLC v. WSI (II)—HWP, LLC* (2020) 57 Cal.App.5th 636, 642–643 [affirming a section 187 amendment adding two brothers as judgment debtors when they "freely transfer[ed] funds among their legal entities and commingle[d] their own funds with the funds of their entities to accomplish whatever purpose they wish[ed]" and rendered the original defendant entity judgment proof].) Had the lease succeeded, the partnership and the individual partners would have benefited. Had Melrose known it had transacted with a partnership and had it known of the individual partners, it could have sued and served those individual partners, and, in that case, individual partner liability for a partnership debt would have been statutorily authorized.

To be sure, and as explained (see *infra*, Discussion, part II.B), imposition of joint and several liability on an individual partner is not automatic. First, a judgment against a partnership is not a judgment against a partner. (Corp. Code, § 16307, subd. (c).) Second, a partner litigating for a partnership may bind the partnership and its assets, but does not automatically bind other partners in their individual capacities. (*Dillard*, *supra*, 34 Cal.2d at pp. 214–218; *Promotus Enterprises, Inc. v. Jiminez*, *supra,* 21 Cal.App.3d at p. 565.) Third, a plaintiff may obtain a judgment for joint and several liability against a partner if a plaintiff serves that partner individually. (Code Civ. Proc., § 369.5, subd. (b).) But none of these rules undercuts the bedrock rule of partners' joint and several liability. And none of these rules precludes obtaining judgments against partners as individuals through other proper methods.

Thus, if an absent partner sufficiently controls the litigation, the litigation may bind that partner individually under principles of preclusion. (*Dillard*, *supra,* 34 Cal.2d at p. 216 [preclusion doctrine could bind absent partners].) Whether the overlap between control for purposes of preclusion and control for purposes of section 187 is complete, cases addressing one doctrine may inform cases addressing the other. (See *Minton v. Cavaney* (1961) 56 Cal.2d 576, 581 (*Minton*) [evaluating litigation control for preclusion and citing a section 187 decision, *Motores, supra,* 51 Cal.2d 172]; *Gottlieb v. Kest* (2006) 141 Cal.App.4th 110, 152 (*Gottlieb*) [evaluating litigation control for preclusion and citing both preclusion and section 187 decisions].)

" 'Control of the litigation sufficient to overcome due process objections may consist of a combination of factors, usually including the financing of the litigation, the hiring of attorneys, and control over the course of the litigation.' " (*NEC, supra,* 208 Cal.App.3d 772, 781.) No factor tends to be determinative and "courts look to the totality of the circumstances in determining the issue of control." (*Conte v. Justice* (2d Cir. 1993) 996 F.2d 1398, 1402; accord, *Gonzalez v. Banco Cent. Corp.* (1st Cir. 1994) 27 F.3d 751, 759 ["The critical judgment cannot be based on isolated facts. Consequently, an inquiring court must consider the totality of the circumstances to determine whether they justify a reasonable inference of a nonparty's potential or actual involvement as a decisionmaker in the earlier litigation"]; see also *Aronow v. LaCroix* (1990) 219 Cal.App.3d 1039, 1048–1050 [privity arising from control and adequate representation is a highly fact-specific determination and control need not be complete]; *Ceresino v. Fire Ins. Exchange* (1989) 215 Cal.App.3d 814, 821 [looking to "the practical situation" when evaluating control].) Control helps to establish that the absent party " ' "should reasonably have expected to be bound by the prior adjudication," ' " which can arise " 'if the unsuccessful party in the first action might fairly be treated as acting in a representative capacity for the party to be estopped.' " (*Gottlieb*, *supra*, 141 Cal.App.4th at p. 156.)

In the context of assessing whether to bind absent corporate alter egos, it has been said that "some active defense of the underlying claim is contemplated." (*NEC, supra,* 208 Cal.App.3d 772, 781, citing *Minton*, *supra*, 56 Cal.2d at p. 581.) This can refer to the actual litigant defending a suit actively on its merits rather than, for instance, acceding to a default judgment. A default judgment might indicate a corporate defendant's preference for bankruptcy rather than a concession of liability such that it could be unfair to bind absent parties even closely related to the defendant. (*NEC*, at pp. 780–781 [when there is a default, there is "no defense . . . to control"]; see *Motores*, *supra,* 51 Cal.2d at pp. 175–176 [rejecting addition of alleged alter egos of a corporation as judgment debtors following a default judgment]; *Gottlieb*, *supra*, 141 Cal.App.4th at pp. 153–154 [no control by alleged alter ego when corporation had no assets to mount a defense and took a default].)

The concept of an active defense can also refer to an absent party's level of participation. (*Minton*, *supra*, 56 Cal.2d at p. 581.) In *Minton*, our Supreme Court stated an absent party — there, a corporate officer absent from a suit against the corporation — must " 'participate in the control of the action and if judgment is adverse, be able to determine whether or not an appeal should be taken. It is not sufficient that he supplies the funds for the prosecution or defense, that he appears as a witness or cooperates without having control.' " (*Ibid*; see *NEC*, *supra,* 208 Cal.App.3d at p. 781 ["it is not enough that Hurt was 'aware' " as "[s]urely every chief executive officer of a corporation is cognizant of claims asserted against the corporation"]; *Gottlieb*, *supra*, 141 Cal.App.4th 110, 152.)

In the partnership context, *Dillard* establishes mere awareness or knowledge of a pending suit is not control of it. (*Dillard*, *supra*, 34 Cal.2d at p. 217.) Absent partners deserved an opportunity "to prove that they did not participate in the conduct of the prior defense or agree to have their copartner . . . conduct it for them." (*Dillard*, at p. 217.) While *NEC* and *Gottlieb*, citing to *Minton*, called for a certain level of active participation when a closely held corporation and its owners are involved, *Dillard*, though it did not fully address the scope of control, did not use that language. Also, when the Restatement summarizes the participation required of absent owners of closely held corporations and absent partners, it does not use identical language. The Restatement concludes absent owners of a closely held corporation, such as those in *NEC* and *Gottlieb*, are bound if they "actively participated in the action on behalf of the corporation." (Rest.2d Judgments, § 59, subd. (3)(a), p. 94.) But with absent partners, they are bound if they "controlled or participated in controlling the defense of the action, or [were] given notice of an opportunity to defend the action." (*Id.*, § 60, subd. (1)(b)(ii), p. 106.)

Sawyer v. Sunset Mut. Life Ins. Co. (1937) 8 Cal.2d 492 (*Sawyer*) offers additional perspective. There, the question was whether beneficiaries could bind a reinsurer, Sunset Mutual, based on a judgment they obtained against an original insurer, Roosevelt Mutual. (*Id.* at pp. 494–495, 500.) First, the court determined that, given the reinsurance contract, the reinsurer, Sunset Mutual, "was jointly liable with . . . Roosevelt Mutual . . . on the policy." (*Id.* at p. 497.) It then accepted a form of the beneficiaries' "contention that where one person is responsible over to another to pay the latter's obligation, either by law or contract," preclusion could apply. (*Id.* at p. 500.) The court saw "no escape from [that] conclusion." (*Ibid.*) "It is not necessary for a reinsurer to actively participate in the defense of the action, provided it is proved that the reinsurer has notice of the pendency of the action and is afforded an opportunity to defend, and the defense is carried on without fraud or collusion by the original insurer." (*Id.* at p. 501.) Given the original insurer, Roosevelt Mutual, had defended the original action "to the best of its ability" and the reinsurer, Sunset Mutual, had notice but refused to participate, preclusion was appropriate. (*Ibid.*)

Sawyer addressed preclusion in a scenario where the underpinnings of liability amongst parties were preordained. Partnership is peculiarly such a scenario. Partnership law exposes partners to automatic liability of the sort corporations law strives to prevent. (Corp. Code, § 16306, subd. (a).) The expectation of partners in partnership is liability. Partnership law, moreover, makes partners agents of the partnership and exposes partners to individual judgments on partnership debts, even if those individual judgments do not arise and cannot be collected upon automatically. (*Id.*, §§ 16301, subd. (1), 16307, subd. (c); Code Civ. Proc., § 369.5, subd. (b).) Some jurisdictions view the partnership relationship as so special that it does automatically expose individual partners to judgments in later suits even absent control. (Rest.2d Judgments, § 60, com. a, p. 109; *id.*, reporter's notes, p. 115; *14th RMA Partners, L.P. v.*

Reale, *supra*, 100 F.3d at pp. 280–281; *Dayco Corp. v. Fred T. Roberts & Co.*, *supra*, 192 Conn. at p. 505.) Although the nature of the partnership relationship does not yield this result in California (cf. *DKN Holdings*, *supra*, 61 Cal.4th at p. 826 [preexisting joint and several liability is not itself enough for privity and preclusion]), it nonetheless, in tandem with *Sawyer* and *Dillard*, informs and offers context for how to assess when individual partners have sufficient litigation control to render themselves bound for purposes of a section 187 motion to amend.

In light of this, but without delineating further rules on the topic, we conclude the evidence supports the trial court's fact-bound finding of the individual partners' litigation control in this case for purposes of section 187. As already noted, Sina was the partnership's designated agent for leasing, the lease was a partnership lease on the partnership's books, and the partnership was the "real defendant" in the action. The partnership, not Sina, paid for the lawyers and the litigation. Sina litigated vigorously; the proceedings were the antithesis of a default. Every partner to be added as a judgment debtor conceded awareness of the litigation and its subject matter. They were on notice. While none of the partners may have selected the attorneys that represented Sina and while none may have been asked to make, or made, material decisions regarding the lawsuit, no evidence suggests the partners lacked an opportunity to participate. To the contrary, they impliedly, over the course of years, ratified Sina as their representative and ratified Sina's defense tactics, footing the litigation bill throughout. Even now, there is no suggestion Sina could have better defended the suit or that the partners could have contributed something different. The partners' incentives, once aware of the litigation, to monitor

Sina and the litigation were significant. Even with the partnership unnamed in the complaint, it can be inferred the partners knew of the partnership's secret involvement. Sina, moreover, rarely, if ever, had any financial transactions outside of the partnership. In fact, all the partners' seemingly personal transactions in their "one-for-all" partnership were sources of income and liability for the partnership. The Melrose suit, then, given the nature of the partnership's treatment of personal assets and the laws applicable to partnerships generally, presented grave, foreseeable financial risks to the partners as individuals. The individual partners sufficiently controlled the suit for purposes of section 187 given the contours of their partnership relationship with Sina, all while Sina may be fairly said to have acted concertedly for the partnership and the partners. (See *Gottlieb*, *supra*, 141 Cal.App.4th at p. 156.)

Assessing the individual partners' relationship to Sina, the partnership, and the litigation, the individual partners' addition as judgment debtors under section 187 was, as with Amey, within the broad discretion we afford the trial court in these matters.

DISPOSITION

We affirm the judgment and award costs to respondents.

SCHERB, J.

We concur:

STRATTON, P. J.

WILEY, J.