

United States District Court  
Western District of Arkansas  
Fayetteville Division

Garland D. Murphy, III, M.D., §  
and Phyllis Murphy, §  
individually and on behalf of §  
all others similarly situated, §  
§  
Plaintiffs, §  
§  
v. §  
§  
Gospel for Asia, Inc., §  
Gospel for Asia-International, §  
K.P. Yohannan, Gisela Punnose, §  
Daniel Punnose, David Carroll, §  
and Pat Emerick, §  
§  
Defendants. §

Case no. **5:17-CV-5035 TLB**

**Motion to Stage Alter Ego Issues After Verdict<sup>1</sup>**

The Court's case management order sets October 19, 2017 as the deadline for seeking leave to add parties. Discovery is far from complete, but the Murphys have learned of at least 76 entities (thus far) that may prove to be alter egos of named Defendants GFA, Inc., K.P. Yohannan, and/or family members and close associates of Yohannan. Does this mean the Murphys must now seek leave to add all these entities as parties to the case?

Applicable law and practical considerations strongly suggest that the answer is "no." Rather, the best course of action under these circumstances is to address alter ego

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<sup>1</sup> Counsel for the parties have conferred by phone regarding the relief sought and agreement could not be reached.

issues only if the Murphys first obtain a judgment against the named Defendants.<sup>2</sup> But because the case management order is silent except for the approaching deadline to add parties, the Murphys—for clarity and out of caution—now ask the Court to explicitly build an alter ego phase of trial after verdict into the case management order.

### **Background**

The Court entered its case management order [Doc. 27] on June 5, 2017. Item 3, amendment of pleadings, says “Leave to amend pleadings and/or substitute parties shall be sought no later than October 19, 2017.” *Id.* at 2.

Since the time of the case management hearing, the Murphys have learned of the existence of at least 76 different entities, all of which appear to be closely connected with GFA and/or controlled, in whole or in relevant part, by Yohannan, members of his family, and/or close associates. A list of these entities is attached as Exhibit A; many use “Gospel for Asia” or “Believers Church” in their names, and most are foreign. The Murphys knew about some of these entities before filing suit, but have learned about the majority only through their investigations during discovery thus far.

The Murphys allege, *inter alia*, that they and the putative class made donations to GFA with specific designations as to how the donations were to be applied. They dealt only with Defendants and not directly with the entities on Exhibit A. The funds were allegedly delivered to various entities in Southeast Asia.<sup>3</sup> Plaintiffs believe these entities are so closely linked to the named Defendants,<sup>4</sup> they are essentially their alter egos, and Defendants may have used them to facilitate illicit transfers of money. And if

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<sup>2</sup> Other than potential alter egos, the Murphys have no plans to add any other parties.

<sup>3</sup> See, e.g., Transcript of May 16 scheduling conference [Doc. 26] at 57:12-15:

“THE COURT: Well, did funds from the U.S. donors – well, did Gospel for Asia send money, provide money, give money to these Indian entities?

MR. MOWREY: Yes, ....”

<sup>4</sup> See, e.g., paragraphs 36-38 of Plaintiffs’ Original Complaint [Doc. 1].

the Murphys eventually obtain judgment against one or more of the named Defendants, they want to be certain they can enforce it against any alter egos (should the named Defendants prove to be impecunious while all the money has made its way to one or more of these numerous entities).

**The Court should grant the motion and add an alter ego phase**

As this Court recently held, equity is the essence of the alter ego doctrine, and the corporate entity won't be honored to defeat the equitable rights of third parties. *See Tang v. Northpole, Ltd.*, 314 F.R.D. 612, 619 (W.D. Ark. 2016)(Brooks, J.). Under Arkansas law, alter ego can be applied to aid a third party in enforcing a judgment where, for example, the judgment debtor seeks to use the corporate form to avoid the judgment's effect. *See Anderson v. Stewart*, 366 Ark. 203, 211-12, 234 S.W.3d 295 (Ark. 2006). In Texas, where GFA is located, the alter ego doctrine is essentially the same, and may be used post-judgment without being subject to limitations or res judicata defenses. *See generally Matthews Const. Co., Inc. v. Rosen*, 796 S.W.2d 692 (Tex. 1990).

In addition, because RICO is a federal claim, under Eighth Circuit law, the federal common law of piercing might also be implicated in this action. *See N.L.R.B. v. Bolivar-Tees, Inc.*, 551 F.3d 722, 727-28 (8th Cir. 2008). Fortunately, federal law in this circuit is also in agreement that piercing is appropriate where "there is unity of interest and lack of respect given to the separate identity" and "adherence to the corporate fictions [would] sanction a fraud, promote injustice, or lead to an evasion of legal obligations." *Minn. Laborers Health & Welfare Fund v. Scanlan*, 360 F.3d 925, 928 (8th Cir. 2004). To further simplify matters, the Eighth Circuit has also recognized that piercing may appropriately be employed to enforce a judgment that otherwise would go unsatisfied. *Bolivar-Tees*, 551 F.3d at 727.

Allowing the parties to address the collateral issues of alter ego after judgment (if at all) will keep the litigation focused on the main issues of liability and damages. This is fully consistent with the equitable purpose of the alter ego doctrine, and the Court's explicit inclusion of an alter ego phase of trial to be held, if at all, after judgment will serve this purpose and eliminate any need for the Murphys to vastly expand the scope of the case by adding 76 plus new parties merely to avoid a forfeiture. Nor will the inclusion of this stage prejudice Defendants or their alter egos in any conceivable way. *See Taylor v. Sturgell*, 553 U.S. 880, 893-95 (2008). Conversely, requiring the addition of 76 more defendants as compulsory parties runs the risk of hamstringing the case with collateral issues and motion practice.

### **Conclusion and prayer**

The Murphys therefore respectfully request the Court to explicitly add an alter ego phase of trial, to be litigated (if at all) only should the Murphys obtain a judgment against the named Defendants. The equitable purpose of the alter ego doctrine and the unique circumstances presented make this the best practical course of action.

Dated: October 4, 2017

Respectfully submitted,

/s/ Marc R. Stanley

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that true and correct copies of the foregoing were served on October 4, 2017, on the following counsel of record via the method indicated:

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/s/ Marc R. Stanley \_\_\_\_\_  
Marc R. Stanley

## Exhibit A

### Possible Alter Ego Entities

1. Believers Church - India
2. Gospel for Asia - India (n/k/a Ayana Charitable Trust)
3. Last Hour Ministry
4. Love India Ministries
5. Believers Church
6. Believers Church - Bangladesh
7. Believers Church - Myanmar
8. Believers Church - Nepal
9. Believers Church - Sri Lanka
10. Gospel for Asia – Bangladesh
11. Gospel for Asia – Nepal
12. Gospel for Asia – Myanmar
13. Gospel for Asia – Sri Lanka
14. Gospel for Asia - International
15. Gospel for Asia – United Kingdom
16. Gospel for Asia – Germany
17. Gospel for Asia – Canada (n/k/a GFA World)
18. Gospel for Asia – New Zealand
19. Gospel for Asia – Australia
20. Gospel for Asia – South Africa
21. Gospel for Asia – South Korea
22. Gospel for Asia - Finland
23. Gospel for Asia, Inc. (TX Corp)
24. Gospel for Asia 75 LLC
25. Gospel for Asia 275 LLC
26. Gospel for Asia School of Discipleship
27. Bridge Builders, LLC
28. Cup Of Blessing, LLC
29. Grace in Action, LLC
30. In His Steps, LLC
31. Peace Givers, LLC
32. Road to Peace, LLC
33. Shepherd's Care, LLC
34. Teaching Skills, LLC
35. Unconditional Love, LLC
36. Unfailing Love, LLC
37. Voice of Love, LLC
38. Way of Hope, LLC
39. Little Hills (Canada)
40. The Blind See (Canada)
41. The Lame Walk (Canada)
42. Lift Up Their Voices (Canada)
43. Growth in Fraternity Trust

44. Shekina Prophetic Mission Trust
45. New Hope Foundation
46. Holy Spirit Ministries
47. Rehoboth Indian Gypsy New Life Trust
48. Arul Shelter Home Trust
49. NISSI
50. POET
51. Heavenly Grace Ministry
52. Bridge of Hope
53. Cheruvally Rubber Estate
54. Believers Church Theological Seminary
55. Believers Church Residential School
56. Believers Church Residential School Tiruvalla
57. Believers Church Vidya Jyothi English School
58. Believers Church Mahatma Public School, Chavara
59. Believers Church Mahatma Central School
60. Believers Church Mulamanna VHSS
61. Believers Church Residential School, Orissa
62. Believers Church Residential School, Allapuzha
63. Believers Church Holy Angels Public School
64. Believers Church Grace Garden Public School
65. Believers Church Medical College Hospital
66. Caarmel Engineering College
67. Athmeeya Yathra Media
68. Athmeeya Yathra Television
69. Athmeeya Yathra Radio
70. AY Broadcast Foundation
71. Believers Church Medical Centre, Purulia, West Bengal
72. Believers Church Medical Centre, Konni, Kerala
73. Asha Grih Children's Homes
74. Dora Microfinance
75. Gospel For Asia Football (soccer) Club - Myanmar Premier League
76. St. Johannes International School Rajasthan