

1 Lim now moves for summary judgment pursuant to Rule 12(b)(6) of the CNMI Rules of
2 Civil Procedure on the grounds that he has a separate and distinct legal identity from TAC, and
3 that he should not be held liable for the corporate actions of TAC. This motion came before the
4 Court on regularly scheduled hearing on October 2, 1996.

5 **II.**

6 **FACTS**

7 The evidence placed before the Court relevant to this Motion is as follows:

8 In their First Amended Complaint ("FAC"), Plaintiffs make the following allegations:

9 1. That TAC is the alter ego of Lim and "a unity of interest and ownership
10 between TAC and Lim existed such that the individuality between Lim and TAC
11 ceased to exist." FAC ¶4.

12 2. In mid-1994, Plaintiffs submitted structural plans for the VIP building, a three
13 story commercial and residential building in Saipan. FAC ¶10.

14 3. On or about July 20, 1994 TAC, through its President and General Manager
15 Lim, entered into a contract with Plaintiffs to construct the building. FAC ¶13.

16 Although Plaintiffs made numerous allegations of wrongdoing against Lim in relation to the
17 construction of the building, there is no allegation that Lim took any action outside the scope of
18 his employment as President of TAC. Additionally, Plaintiffs introduced no evidence in
19 opposition to Lim's motion for summary judgment.

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21 In support of his motion for summary judgment, Lim introduced the following evidence:

22 1. Affidavit of Albert Tiu, Vice President and Treasurer of TAC ("Tiu Aff."). In
23 his affidavit, Mr. Tiu testifies that:

24 a. TAC started with an initial capitalization of \$10,000 in 1984; the
25 capitalization was increased to \$45,555 in 1991. Tiu Aff. ¶ 4, exhs.
26 "A" and "C-1."
27

1 b. TAC's funds are used solely to pay administrative and labor costs
2 and to finance construction projects that TAC has contracted to
3 perform. Tiu Aff. ¶5.

4 c. Corporate formalities such as corporate checking accounts and
5 corporate tax returns have been observed by TAC. Tiu Aff. ¶¶6,7,
6 and 10; exhs "B-1" to "B-10."

7 d. In accordance with TAC's bylaws, TAC has never declared a
8 dividend because the corporation has never had any surplus earnings
9 from its undistributed profits. Tiu Aff. ¶8, exh. "A."

10 e. None of the TAC directors have received any salary or
11 remuneration from TAC; no loans or disbursements have been made
12 to any of its directors, stockholders or officers. Tiu Aff. ¶9.

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14 2. Declaration of Antonio Lim, President and General Manager of TAC ("Lim
15 Dec."). In his Declaration, Lim also testifies that corporate formalities of TAC
16 have been followed since the company's inception in 1984. Evidence of TAC's
17 corporate existence and activities are as follows:

18 a. TAC was organized and incorporated on January 27, 1984, under
19 the laws of the Commonwealth of the Northern Mariana Islands.
20 Lim Dec. ¶5, exhs. "A" and "B."

21 b. TAC has maintained a board of directors, which since 1990, has been
22 composed of Lim, Carmen Ong and Tiu. Lim Dec. ¶6, exhs. "C-1"
23 through "C-12."

24 c. TAC conducts regular meetings of stockholders and board of
25 directors. Lim Dec. ¶9, exhs. "D-1" to "D-5" and "E-1" to "E-5."

26 d. TAC has filed timely annual corporate reports with the CNMI registrar
27 of Corporations. Lim Dec. ¶10, exhs. "C-1" to "C-12."

1 e. TAC has maintained a CNMI business license since 1984. Lim
2 Dec. ¶11, exh. "F."

3 f. Since becoming director and corporate officer of TAC, Lim has
4 received no salary or benefits from TAC. Lim Dec. ¶12.

5 g. While negotiating with Plaintiffs, Lim testifies that he made no
6 representations to Plaintiffs that he was the owner of TAC, and that he made
7 no representations and took no actions outside the scope of his employment
8 functions with TAC. Lim Dec. ¶13.

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10 **III.**

11 **ISSUE PRESENTED**

12 1. Is there sufficient evidence before this Court to determine that TAC is not the alter ego
13 of Lim and that Lim should not be held personally responsible for TAC's liabilities.

14
15 **IV.**

16 **ANALYSIS^{1/}**

17 **A. Standard for Determining Motions for Summary Judgment.**

18 Rule 56 of the Commonwealth Rules of Civil Procedure allows a party to seek summary
19 judgment on any claim that is not sufficiently controverted by evidence in the record. *See Farina*
20 *v. Mission Investment Trust*, 615 F.2d 1068, 1075 (5th Cir. 1980). When a party seeking
21 summary judgment has met the initial burden required for granting summary judgment, the
22 opposing party either must establish a genuine issue for trial under Rule 56(e) or explain why he

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24 ^{1/} Commonwealth Rules of Civil Procedure 83.2(e) provides that: "Should counsel or a party deem
25 it necessary to cite any authority that is not available in the Commonwealth Law Library, a copy of that
26 authority must be attached to the memorandum in which it is cited. . . . No authority will be considered
27 by the court unless cited in compliance with this provision." Plaintiffs repeatedly violate this provision
28 by relying almost exclusively on cases cited in the California Reporter and California Appellate Reports,
which are not available in the Commonwealth Law Library. Consequently, the Court has not considered
cases cited by Plaintiffs that are in violation of Civil Procedure Rule 83.2(e).

1 cannot yet do so under Rule 56(f). *Cabrera v. Heirs of De Castro*, 1 N.M.I. 172, 176 (1990);
2 *U.S. v. General Motors Corp.*, 518 F.2d 420, 442 n. 111 (D.C.Cir.1975); *See also Celotex Corp.*
3 *v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 2552 (D.C. Cir. 1986); *Belinsky v. Twentieth*
4 *Restaurant, Inc.*, 207 F.Supp. 412, 413 (D.C.N.Y.1962.)

5 Plaintiffs have presented no evidence to refute the evidence presented in Lim's motion for
6 summary judgment, nor have they submitted affidavits as to why they cannot yet do so. In their
7 Opposition, Plaintiffs merely argue that Lim's motion should be denied because discovery must
8 still be conducted. However, under Rule 56, Plaintiffs unsubstantiated arguments are not evidence
9 and cannot be considered as such. *See Paterson-Leitch Co. v. Massachusetts Municipal Wholesale*
10 *Elec. Co.*, 840 F.2d 985 (1st Cir. 1988) (Party opposing summary judgment not entitled to
11 additional time for discovery pursuant to summary judgment rule when it did not timely file an
12 affidavit, but elected to argue the motion and only thereafter, belatedly attempted to obtain
13 additional time without filing an affidavit, setting out the reasonable basis for its belief that
14 discoverable material facts existed). Thus, this Court must view the evidence presented by Lim as
15 unrefuted, and make a determination as to the sufficiency of that evidence in ruling on Lim's
16 motion for summary judgment.^{2/} *See Anderson v. Schulman*, 337 F.Supp.177, 181-182 (D.C.III.
17 1971) ("We recognize that, notwithstanding the plaintiff's surprising failure to submit any
18 affidavits whatsoever, we must nevertheless determine if defendants have met the burden to show
19 that they are entitled to judgment under established principles of substantive law because the
20 power to grant summary judgment vested in this court by Rule 56(e) if the nonmoving party fails
21 to file any affidavits exists only, by the terms of the rule, 'when appropriate.'")

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24 ^{2/} Plaintiffs cite to California authority for the proposition that the Court must "accept as true all facts
25 properly alleged therein." Opp. at pp 1-2. The Court has not considered Plaintiffs' authorities for this
26 proposition because they violate Rule 83.2(e), Com.R.Civ. P (*See fn. 1*). However, for the record, the
27 Court instructs Plaintiff that "the notion that the pleadings shall be liberally construed, which has
28 application on motions to dismiss for failure to state a claim for relief under Rule 12(b)(6) or for
judgment on the pleadings under Rule 12(c), is not relevant on motions under Rule 56." Wright, Miller
& Kane, *Federal Practice and Procedure: Civil 2d* §279, p. 521.

1 B. All Evidence Before This Court Indicates That TAC Is Not The Alter Ego of Lim.

2 Corporations generally possess a legal existence separate and apart from its officers and
3 shareholders so that the operation of a corporate business does not render officers and shareholders
4 personally liable for corporate acts. *See Derbyshire v. United Bldrs. Supplies*, 392 S.E.2d 37
5 (Ga.App. 1990); *See also Ramsey v. Adams*, 603 P.2d 1025, 1028 (Kan. 1979) (“A corporation
6 and its stockholders are *presumed* separate and distinct, whether the corporation has many
7 stockholders or just one.” emphasis added).

8 However, there is an exception to this presumption and general rule: “[A] creditor may
9 collect a corporate debt from the sole shareholder if (1) the debt has been personally guaranteed by
10 the shareholder; (2) the corporation is completely bogus; or (3) the corporation is merely the alter
11 ego of the sole stockholder. *Ramsey* at 1027 (citations omitted); *See also Lowell Staats Min. Co.*
12 *v. Pioneer Uravan, Inc.*, 878 F.2d 1259, 1262 (10th Cir. 1989) (“When . . . the corporate
13 structure is used so improperly that the continued recognition of the corporation as a separate legal
14 identity would be unfair, the corporate entity may be disregarded and corporate principals held
15 liable for the corporations’ actions.”)

16 Plaintiffs and Lim both cite *Ramsey v. Adams, supra*, as authority for the eight factors
17 commonly relied on by courts to justify piercing the corporate veil:

- 18 (1) Undercapitalization, (2) failure to observe corporate formalities, (3) nonpayment
19 of dividends, (4) siphoning of corporate funds by the dominant stockholder, (5)
20 malfunctioning of other officers or directors, (6) absence of corporate records, (7)
the use of the corporation as a facade for operations of the dominant stockholders,
and (8) the use of the corporation to promote injustice or fraud.

21 *Ramsey* at 1028. However, the *Ramsey* Court instructed that “these factors are guidelines and not
22 a conclusive test.” *Id.* Based on facts similar to those presented here, the *Ramsey* Court held that
23 there was no evidence that any of the eight criteria had been violated, and that the sole stockholder
24 of the corporation could not be held personally liable for the corporations debts. *Ramsey* at 1028.

25 In Opposition to Lim’s motion for summary judgment, Plaintiffs state:

26 Lim has made a showing that TAC appears on paper to have substantially complied
27 with corporate formalities and thus colorably satisfied criteria number 2
However, in addition to investigation [sic] the truth of the documents provided,

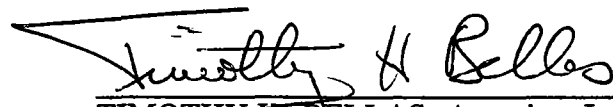
1 Plaintiff submits that [sic] remainder of the *Ramsey* criteria demand inquiry and are
2 by definition questions of fact that remain unanswered absent discovery. n.1 It is
3 noteworthy to point out that Defendant Lim actually admits that he has failed to
4 issue dividends and thereby committed one of the wrongs prohibited. See Tiu
5 Affidavit, paragraph 8.

6 Opposition at pp. 5-6.^{3/} Lim does admit that no corporate dividends have been paid. Although
7 this may indicate corporate improprieties, it alone is not sufficient evidence to justify piercing the
8 corporate veil. The unrefuted evidence before the Court is that TAC has never issued a dividend
9 because it has “never had any surplus earnings from its undistributed profits.” Tiu Aff. at ¶8.
10 Without any evidence to the contrary, the Court accepts this evidence as true. Similarly, Plaintiffs
11 present no evidence to establish any of the other seven criteria, i.e., that TAC was
12 undercapitalized, that corporate formalities were ignored, that corporate funds were siphoned, that
13 directors and officers other than Lim were inactive, that records were not kept, or that TAC was a
14 facade for operations of Lim. Consequently, and based on the evidence before it, the Court finds
15 no basis to conclude that TAC is the alter ego of Lim or that Lim is personally responsible for
16 TAC’s liabilities.

17 **ACCORDINGLY, IT IS HEREBY ORDERED THAT:**

18 Defendant Lim’s Motion for Summary Judgment is **GRANTED**, and Plaintiffs’ Complaint
19 against Defendant Antonio T. Lim is hereby **DISMISSED**.

20 So ORDERED this 3rd day of January, 1997.

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22 
23 TIMOTHY H. BELLAS, Associate Judge
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26 ^{3/} Plaintiffs also violated Rule 7(c) of the Com. R.Civ. Pro., which requires “[a]ll pages” in pleadings
27 filed with the court to “be numbered consecutively at the bottom . . .” Plaintiffs are encouraged to
28 follow all requirements for pleadings.