STATE OF MICHIGAN

COURT OF APPEALS

MARTIN E. LEVIN,

Plaintiff-Appellee/Cross-Appellant,

v

THORN APPLE VALLEY, INC., a Michigan corporation,

Defendant-Appellant/Cross-Appellee.

UNPUBLISHED
December 1, 1998

No. 200106
Oakland Circuit Court
LC No. 89-380591 CK

Before: Griffin, P.J. and Gage and R. J. Danhof*, JJ.

PER CURIAM.

Defendant appeals as of right and plaintiff cross appeals from a second amended final judgment that granted in part judgment notwithstanding the verdict (JNOV) in favor of defendant on plaintiff's negligence claim, but awarded plaintiff a total of $782,000 based on a special jury verdict, plus interest and taxable costs, on claims for breach of contract and tortious interference with an advantageous business relationship. We affirm the grant of JNOV on the negligence claim, but reverse the denial of JNOV on the breach of contract and tortious interference claims.

This is an action by plaintiff to recover monetary losses that he allegedly suffered as a guarantor or creditor of a bankrupt corporation, Haberstroh Farm Products ("Haberstroh"), which plaintiff owned equally with defendant through their stock ownership of Haberstroh's parent company, ML Holding Corporation. Prior to bankruptcy proceedings, a lender, Bank of New England (Bank), called its loan for Haberstroh and filed an action in federal district court against plaintiff, defendant and other entities affiliated with plaintiff, alleging both contract and tort claims. Cross-claims and counterclaims were also filed in that lawsuit. The federal district court ultimately was presented with the issue whether it should retain ancillary jurisdiction over plaintiff's cross-claims against defendant in that lawsuit. It resolved the issue by splitting plaintiff's causes of actions against defendant, dismissing some cross-claims without prejudice so that plaintiff could pursue them in state court, holding that plaintiff lacked standing to bring certain other derivative claims that could be pursued by the bankruptcy trustee (e.g., shareholder actions where the injury to the shareholder would be secondary to the injury to the corporation), and expressly

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

excepting from its decision any determination whether the dismissed claims could be pursued by plaintiff in his capacity as a creditor. As part of the decision, defendant's cross-claims were also dismissed without prejudice. Plaintiff thereafter filed the instant state action in circuit court, but a stay was ordered pending a decision by the Sixth Circuit Court of Appeals, which ultimately affirmed the district court's decision.

The original trial judge assigned to this case thereafter granted summary disposition in favor of defendant on four counts, but allowed plaintiff to proceed to trial on his claims for breach of contract and indemnification. However, a successor judge modified that decision to allow a trial on all counts, except a conversion count that was withdrawn by plaintiff. The jury returned verdicts in plaintiff's favor for breach of contract, negligence, and tortious interference with a business relationship. Defendant was subsequently granted JNOV on the negligence count, but was denied relief on the other two counts. On appeal, the parties raise issues concerning plaintiff's contract, negligence, and tortious interference claims, but do not challenge the jury's finding that defendant was not liable for indemnification or misrepresentation. Hence, we confine our review to the verdicts on the contract, negligence, and tortious interference claims.

I

Contract

We initially reject defendant's claim that the federal decisions operated to bar plaintiff's contract claim because of res judicata. The application of res judicata is a legal question that we review de novo. *Bergeron v Busch*, 228 Mich App 618, 621; 579 NW2d 124 (1998), lv pending. Res judicata does not apply to the contract claim because the federal district court split plaintiff's causes of action and specifically dismissed the contract claim without prejudice and without being presented with or deciding the issue whether plaintiff had standing to assert the contract claim in any capacity. The Sixth Circuit Court of Appeals affirmed on grounds that did not require it to address plaintiff's standing to pursue the contract claim. See *Bergeron, supra*.

As an alternative to the defense of res judicata, defendant argues that plaintiff lacked standing to pursue his contract claim in the state court because it was derivative of Haberstroh's claims and, hence, should be pursued by the bankruptcy trustee. Further, defendant argues that plaintiff failed to offer trial evidence sufficient to prove the existence of a contract between himself and defendant.

Initially, we note that defendant's arguments are deficient because defendant does not identify the particular decision in the lower court upon which its claims are based. Pursuant to MCR 7.212(C)(7), defendant is required to include "[p]age references to the record . . . to show whether the issue was preserved for appeal by appropriate objection or by other means." Moreover, the failure to make proper motions in a civil jury trial challenging the sufficiency of the evidence is one of the circumstances where a court may find waiver of an issue, absent "compelling or extraordinary circumstances amounting to a fundamental miscarriage of justice." *Napier v Jacobs*, 429 Mich 222, 237-238; 414 NW2d 862 (1987). This Court may decline to grant relief where a party does not

address the basis of a trial court's decision. *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 175; 568 NW2d 365 (1997).

Despite these deficiencies, we nonetheless will review de novo defendant's arguments, confining our review to the issue whether defendant has shown error in the trial court's refusal to grant JNOV on the contract claim. *Forge v Smith*, 458 Mich 198, 204; 580 NW2d 876 (1998). Only if the evidence and all legitimate inferences, viewed in a light most favorable to the plaintiff, fail to establish a claim as a matter of law should a motion for JNOV be granted. *Orzel v Scott Drug Co*, 449 Mich 550, 557-558; 537 NW2d 208 (1995).

The issues of standing and sufficiency of evidence are related because they both require an analysis of the capacity in which plaintiff entered into the contract and claimed damages. The existence of a corporate debtor-in-bankruptcy, namely, Haberstroh, means that the bankruptcy trustee has exclusive rights in Haberstroh's claims. See *In re Van Dresser Corp*, 128 F3d 945 (CA 6, 1997) (guarantor has no standing to bring claims against alleged tortfeasor resulting from his payment of debtor corporation's loan because the tort claims were the property of the bankruptcy trustee for the debtor corporation, but could, if Michigan law allowed him, bring an action to recover the costs of defending collection efforts because this would not be property of the bankruptcy estate). Moreover, even when there is no corporate debtor-in-bankruptcy, the issue of standing requires consideration whether the injury claimed is a separate or distinct injury, or one that is merely derivative of the corporation's injury, and whether an individual shows a violation of duty owed directly to him. See *Christner v Anderson, Nietzke & Co, PC*, 433 Mich 1; 444 NW2d 779 (1989); *Michigan Nat'l Bank v Mudgett*, 178 Mich App 677, 679-680; 444 NW2d 534 (1989). These two considerations may overlap, as was observed in *Cunningham v Kartridg Pak Co*, 332 NW2d 881, 883 (Iowa, 1983):

> Recognizing that these two concepts will usually, if not always, overlap, we conclude that the test is best stated in the disjunctive: in order to bring an individual cause of action for direct injuries a shareholder must show that the third-party owed him a special duty or that he suffered an injury separate and distinct from that suffered by the other shareholders.

Although the above test is stated in the context of shareholder claims, we agree with those jurisdictions that hold that rules of law paralleling the rules for shareholder's individual actions should be applied to creditors and guarantors. See *Barger v McCoy Hillard & Parks*, 488 SE2d 215 (NC, 1997). Accordingly, individual actions may be prosecuted if a creditor or guarantor can show (1) that the wrongdoer owed a special duty personal to him in his capacity as a creditor or guarantor, or (2) that the injury suffered is personal to him as a creditor or guarantor and distinct from the injury suffered by the corporation itself. *Christner, supra* at 9; *Michigan Nat'l Bank, supra* at 679.

In the instant case, plaintiff and defendant (through alleged corporate agents) occupied a number of different statuses in relation to Haberstroh and its parent corporation. Viewed in a light most favorable to plaintiff, the evidence showed that the parties were shareholders of the parent company of Haberstroh, officers and directors of Haberstroh, and creditors or guarantors of obligations. Plaintiff's contract claim was based on a theory that he and defendant (acting through an alleged corporate agent

of the defendant who was also on Haberstroh's board of directors) reached an oral agreement that required plaintiff to perform certain sales duties for Haberstroh and required defendant (acting through an alleged corporate agent who was also an officer of Haberstroh) to perform certain management duties for Haberstroh, subject to plaintiff's right to be consulted about operational changes, and that liability could be imposed on defendant for breaching its duty to consult. However, the damages sought by plaintiff for the alleged breach of the duty to consult flowed from an alleged injury to Haberstroh associated with the operational change. Specifically, plaintiff claimed that the operational change resulted in Haberstroh's insolvency, which, in turn, caused him financial losses (e.g., plaintiff sought to recoup moneys he was required to pay because Haberstroh could not pay its debts, as well as attorney fees allegedly incurred in defending collection efforts brought against him in two lawsuits).

Examined in this context, plaintiff's standing depends on whether he established that defendant owed a contractual duty that was personal to him, as a creditor or guarantor, and was separate and distinct from the duty defendant would owe to Haberstroh. Without this contractual duty, the injuries claimed by plaintiff are properly viewed as derivative of Haberstroh's injury because they flow from Haberstroh's insolvency. Further, the fact that plaintiff's claim for attorney fees, assuming that they are recoverable in contract, could not be pursued by the bankruptcy estate does not save plaintiff's contract claim because the attorney fees were claimed to have arisen out of plaintiff's status as a guarantor on obligations that should have been paid by Haberstroh. Under Michigan law, it is a general rule that one who is not a party to the contract cannot pursue a claim for breach of an agreement. *First Security Savings Bank v Aitken*, 226 Mich App 291, 305; 573 NW2d 307 (1997). Hence, the dispositive question is whether, under the standards for JNOV, plaintiff proved that a valid oral contract was entered into between defendant and plaintiff, in their respective individual capacities, that would require defendant to consult with plaintiff in his capacity as a creditor or guarantor, or at least for plaintiff's benefit as a guarantor or creditor, before making an operational change. [1]

A valid contract requires a meeting of the minds, which means "mutual assent" on all essential terms. *Kamalnath v Mercy Memorial Hosp Corp*, 194 Mich App 543, 548-549; 487 NW2d 499 (1992). "A meeting of minds is judged by an objective standard, looking to the express words of the parties and their visible acts, not their subjective states of mind." *Stanton v Dachille*, 186 Mich App 247, 256; 463 NW2d 479 (1990), quoting *Heritage Broadcasting Co v Wilson Communications, Inc*, 170 Mich App 812, 818; 428 NW2d 784 (1988). A distinct problem exists when a contract contains essential terms, but details of performance are missing. In this situation, the law will supply the missing details by construction. See *Nichols v Seaks*, 296 Mich 154, 159; 295 NW 596 (1941). Cf. *Walter Toebe & Co v Dep't of State Hwys*, 144 Mich App 21, 31; 373 NW2d 233 (1985) (when a written contract is silent as to the time of performance, a reasonable time is presumed without reference to parol evidence).

The enforceability of a contract depends on consideration. *Hisaw v Hayes*, 133 Mich App 639, 643; 350 NW2d 302 (1984). Valid consideration requires a bargained-for exchange. *Higgins v Monroe Evening News*, 404 Mich 1, 20; 272 NW2d 537 (1978). The rule as to consideration for a contract "seems to be well determined, that there must be a benefit on one side, or a detriment suffered or service done on the other." *WKBW, Inc v Children's Bible Hour*, 332 Mich 569, 576-577; 52

NW2d 219 (1952), quoting *Sanford v Huxford*, 32 Mich 313 (1875). A contract evidenced by mutual promises may be valid. *Garlok v Motz Tire & Rubber Co*, 192 Mich 665, 672; 159 NW 344 (1916). The term "promise" has been defined as follows:

> [A] manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made. [*State Bank of Standish v Curry*, 442 Mich 76, 85; 500 NW2d 104 (1993), quoting 1 Restatement Contracts, 2d, § 2, p 8.]

When promises and performances to be rendered to each party are set forth with reasonable certainty, the agreement does not fail for indefiniteness. *Nichols, supra* at 159.

In the instant case, plaintiff testified that the written stock purchase agreement did not define his job duties for Haberstroh. Instead, plaintiff testified that he reached a verbal agreement with defendant's president Joel Dorfman. Plaintiff could not specify a date of the agreement but testified that discussions were held after the stock purchase agreement was signed. Plaintiff described the substance of that agreement as follows:

> The agreement that was reached was that Thorn Apple Valley would take over the operations management of manufacturing operations at the plant, and they would provide the plan with management from their ranks, and that I would be responsible for marketing and the diversification of these products, both the Haberstroh products and other products to be added.
>
> Moreover, at that time my offices were in Kalamazoo. And I was to manage this business from Kalamazoo by working directly through Ron Guerard who was the sales manager. And also I was to receive reports from the plant personnel that TAV would install. And also any changes of an operational nature made in the plant by TAV would be discussed in depth with me, and that I would have the right to provide input and if necessary approval of those changes.

However, Dorfman did not recall any consulting agreement and did not feel that it was necessary because plaintiff was the president of Haberstroh. Defendant's vice president, Louis Glazier, similarly testified that there was no consultation agreement.

Viewed in a light most favorable to plaintiff, we find that plaintiff failed to establish a triable issue whether there was a valid oral contract because plaintiff did not show the express words exchanged by the parties in forming the alleged contract so that they could be objectively judged by the jury. Rather, plaintiff explained his own understanding of the oral contract and the status of the parties when entering into the contract. Plaintiff did not present other corroborating proofs regarding the circumstances surrounding the formation of the alleged contract, or an actual course of performance from which reasonable minds could infer contractual duties owed to him, or at least for his benefit, in a capacity as a guarantor or creditor. Stated otherwise, plaintiff failed to present evidence from which it could be objectively determined that defendant made a bargained-for promise to perform a service (consultation)

for plaintiff's benefit as a creditor or guarantor. Accordingly, the alleged contract must fail as a matter of law for indefiniteness. We therefore conclude that the trial court erred in denying defendant's motion for JNOV with respect to the contract claim.

We also agree with defendant's argument that JNOV should have been alternatively granted, even assuming a valid oral contract to consult, because plaintiff did not prove any contract damages. It is generally held that a "party to a contract who is injured by another's breach of contract may recover from the latter only those damages which are the direct, natural and proximate result of the breach." *Walter Toebe & Co, supra* at 36. See also *Kewin v Massacusetts Mutual Life Ins Co*, 409 Mich 401; 295 NW2d 50 (1980).

In the present case, the trial court erred in denying JNOV on the issue of contract damages because a corporation's insolvency does not arise naturally from the fact of an operational change, regardless of who makes the decision. As this Court stated in *Held Construction Co, Inc v Michigan Nat'l Bank of Detroit*, 124 Mich App 472, 477; 335 NW2d 8 (1983):

> The failure of a party to make payments due under a contract for work or services performed by the other party does not usually result in the financial failure of the performing party or the "financial embarrassment" of its shareholders or officers. The financial ruin of a contracting corporation or its officers is plainly not a consequence arising naturally from a breach of the contract. Therefore, absent evidence that a risk of insolvency was within the actual contemplation of the parties at the time the contract was made, damages are not recoverable for such a consequence.

Thus, absent evidence that a risk of insolvency (with a related possible impact on individual losses sustained as a creditor or guarantor) was within the actual contemplation of the parties when entering into the alleged oral contract on the division of duties, there was an insufficient basis for submitting the contract claim to the jury based on plaintiff's theory that a duty to consult was breached. We find that plaintiff failed to meet this burden of proof. In this regard, we note that plaintiff testified that the parties did not discuss or contemplate the damages that might flow from one party's breach of any agreement; no other evidence was introduced which proved that defendant somehow had agreed to take on responsibility for plaintiff's personal obligations. In any event, the actual course of performance following the alleged breach suggests a contemplated remedy consisting of changes in duties and personnel. Plaintiff testified that he fired the alleged agent of defendant who was responsible for the operational change. Considering all of the circumstances surrounding the formation of the alleged contract and the parties' objective acts, we hold that the evidence, as a matter of law, failed to establish a triable claim for the damages sought by plaintiff. *Orzel, supra* at 557-558.

Finally, we note that plaintiff suggests, as he did at trial, that there existed a separate, enforceable promise by defendant that it would subordinate debt to the Bank. Although the trial court did not address this theory when denying JNOV on the contract claim, we will briefly do so. Keeping in mind that this case did not involve a claim based on promissory estoppel, that is, a promise that should reasonably be expected to induce action and which does induce such action, *State Bank of Standish, supra* at 83-84, and that the enforceability of a contract depends on consideration, *Hisaw,*

supra at 643, we hold that plaintiff failed, as a matter of law, to establish an enforceable contract because plaintiff did not present evidence from which reasonable minds could find that the promise was supported by consideration.

In sum, the trial court erred in denying defendant's motion for JNOV on plaintiff's contract claim. In view thereof, it is unnecessary to address the other issues raised regarding this claim.

II

Tortious Interference

As with the contract claim, defendant claims that plaintiff's tortious interference claim is barred by res judicata, that plaintiff lacked standing to pursue this claim, and that plaintiff failed to prove any tortious interference. Although defendant has again failed to specifically identify the decision or decisions of the trial court underlying its arguments, this Court nevertheless will consider these issues, treating them as a challenge to the trial court's denial of JNOV and reviewing these matters de novo.

Res judicata requires that "(1) the prior action was decided on the merits, (2) the matter contested in the second case was or could have been resolved in the first, and (3) both actions involved the same parties or their privies." *Bergeron, supra* at 621. Here, the federal district court decided an issue of standing relative to cross-claims made by plaintiff against defendant for claims of tortious interference with an advantage business relationship and tortious interference with a contract. The federal district court held that plaintiff and his affiliated entities did not show that defendant had some special duty with respect to them in particular, or that they suffered a separate and distinct injury from Haberstroh. Although it is clear from the district court's decision, and the Sixth Circuit's decision to affirm, that plaintiff was not precluded from asserting a claim in state court based on the same tortious interference theory raised in federal court, arising out of his status as a creditor, it is also clear that the federal court precluded plaintiff from pursuing a cause of action in state court based on an injury that was derivative in nature of Haberstroh's injury and belonged to the bankruptcy trustee. Thus, it was necessary that plaintiff establish his own cause of action in his capacity as a creditor of Haberstroh. Although the federal decisions do not specifically address plaintiff's guarantor status, we note that a guarantor acquires rights against a principal debtor by subrogation. 38 Am Jur 2d, Guaranty, § 127. Further, regardless whether subrogation rights arise by contract or by operation of law, a subrogee, upon paying the obligation owed to the subrogor, is substituted for the subrogor, "thereby attaining the same and no greater rights to recover against the third party." *Citizens Ins Co v American Community Mut Ins Co*, 197 Mich App 707, 709; 495 NW2d 798 (1992).

We do not construe the federal decisions as recognizing a possible cause of action by plaintiff as a guarantor outside of any rights that he may acquire by being subrogated to the rights of a creditor of Haberstroh. However, even if plaintiff could pursue a claim in a guarantor status, we would still be left with an issue of standing and, as we have already held, we apply parallel rules to creditors and guarantors in determining standing.

Given the particular posture of this case, we conclude that plaintiff's failure to establish a claim for tortious interference with an advantageous business relationship as a matter of law, based on his status as a creditor or guarantor, for the financial losses claimed at trial as a creditor or guarantor, is dispositive of this appeal.[2] The basic elements of this tort are:

> [A] valid business relationship or expectancy, knowledge of the relationship or expectancy on the part of the defendant, an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and resultant damage to the plaintiff. [*BPS Clinical Laboratories v Blue Cross & Blue Shield of Michigan (On Remand)*, 217 Mich App 687, 699; 552 NW2d 919 (1996).]

The threshold question under this test is the type of relationship that exists. *Feaheny v Caldwell*, 175 Mich App 291, 302; 437 NW2d 358 (1989). Here, the claim is based on plaintiff's relationship with the Bank. However, because plaintiff dealt with the Bank in a representative capacity when securing loans for Haberstroh's benefit, the only arguable basis for plaintiff's tortious interference claim in his individual capacity was his personal guarantee agreement with the Bank concerning loans for Haberstroh's benefit. See *Feaheny*, *supra* at 301 (an advantageous relationship may be based on contract).

Next, this Court must consider whether plaintiff established that the Bank breached or otherwise terminated its contractual relationship with plaintiff. Viewed in a light most favorable to plaintiff, we hold that plaintiff proved neither a breach nor a termination of the contractual relationship. The evidence showed that the Bank enforced the guarantee and was able to collect from plaintiff by entering into a settlement agreement in the course of the federal lawsuit on the guarantee and other claims.

Even if the Bank's conduct in enforcing a contract right could be viewed as a termination of an advantageous business relationship, we hold that plaintiff failed to establish that the Bank's enforcement action was induced or caused by defendant's interference with that contractual relationship. Under Michigan law, plaintiff must show the "doing of a per se wrongful act or the intentional doing of a lawful act with malice and unjustified in law for the purpose of invading plaintiff's contractual rights or business relationship." *Feldman v Green*, 138 Mich App 360, 369; 360 NW2d 881 (1984). See also *Feaheny*, *supra* at 305; *Bonelli v Volkswagen of America, Inc*, 166 Mich App 483, 499; 421 NW2d 213 (1988). Liability is not imposed when actions are not per se wrongful and are "motivated by legitimate personal and business reasons" rather than a desire to interfere with the contractual or business relationship. *Bonnelli*, *supra* at 499. See also *Wood v Herndon & Herndon Investigations, Inc*, 186 Mich App 495, 500; 465 NW2d 5 (1990).

We reject plaintiff's assertion that defendant's conduct in reneging on a promise to subordinate $1 million in debt constituted the requisite interference with his personal guarantee. While there is evidence of this promise, the failure to subordinate was not unjustified in the law because plaintiff failed to prove an enforceable promise. *Hisaw*, *supra* at 643.

Further, while the evidence that defendant removed inventory from Haberstroh in a manner that permitted the transactions to appear as accounts receivable for lending purposes may constitute evidence of a breach of the loan agreement executed for Haberstroh's benefit, we reject plaintiff's argument that this conduct interfered with the personal guarantee. To the contrary, the evidence was uncontradicted that this particular matter was eventually resolved by defendant's reimbursement to the Bank on accounts receivable. The evidence did not establish that plaintiff paid the Bank under the settlement entered into on the guarantee because of defendant's conduct.

Viewed as a whole and taken in a light most favorable to plaintiff, we conclude that the evidence of defendant's conduct associated with the Bank's relationship with Haberstroh does not establish the requisite interference with the personal guarantee because plaintiff had no basis for a tortious interference claim against defendant that was derivative of Haberstroh's advantageous relationship with the Bank. Further, the evidence that defendant tried placing blame on plaintiff for Haberstroh's demise does not establish the requisite interference because there was no evidence that this conduct was directed at plaintiff's status as a guarantor, as distinguished from his duties performed for Haberstroh in other capacities, such as sales and as president.

In sum, paying the Bank relative to the personal guarantee may give plaintiff subrogation rights for any claim that the Bank had against Haberstroh for not paying the loan. However, as a matter of law, plaintiff failed to establish a tortious interference theory that would support a recovery of damages from defendant arising out of the Bank's enforcement of the personal guarantee. Therefore, the trial court erred in denying the motion for JNOV based on plaintiff's failure to establish a triable tortious interference claim.

In view of the foregoing discussion, we find it unnecessary to address the remaining issues raised by defendant regarding the tortious interference claim.

III

Negligence

Because plaintiff was the party aggrieved by the final judgment of no cause of action, we will first consider plaintiff's claim that the trial court erred in granting JNOV in favor of defendant based on plaintiff's failure to establish a duty. A court decides, as a matter of law, what characteristics must be present for a relationship to give rise to a duty. A factual question may then arise for a jury on whether the evidence establishes the elements of that relationship. *Schanz v New Hampshire Ins Co*, 165 Mich App 395, 402; 418 NW2d 478 (1988). Duty is not sacrosanct in itself, but is only an expression of the sum total of those considerations of policy which lead the law to say that a person is entitled to protection. *Buczkowski v McKay*, 441 Mich 96, 100-101; 490 NW2d 330 (1992). Upon de novo review of the trial court's decision, *Forge supra* at 204, we hold that the trial court reached the correct result in finding no duty because plaintiff failed to establish a relationship with defendant giving rise to a duty so as to allow him to proceed with his claims for economic losses associated with his status as a creditor or guarantor of Haberstroh under the theory that defendant negligently operated Haberstroh. Plaintiff's reliance on the principles in *Courtright v Design Irrigation, Inc*, 210 Mich App 528; 534

NW2d 181 (1995), is misplaced because plaintiff did not claim liability for physical harm arising out of the performance of services. See *Rinaldo's Construction Corp v Michigan Bell Telephone Co*, 454 Mich 65, 84-85; 559 NW2d 647 (1997).

Because plaintiff has established no basis for vacating the trial court's grant of JNOV, we do not consider the alternative grounds for affirmance or a new trial raised by defendant.

IV

CONCLUSION

We affirm the trial court's grant of JNOV in favor of defendant on the negligence count, reverse the denial of defendant's motions for JNOV on the contract and tortious interference claims, and vacate the second amended final judgment of $782,000 plus interest and taxable costs.

Affirmed in part and reversed in part.

/s/ Richard Allen Griffin
/s/ Hilda R. Gage
/s/ Robert J. Danhof

[1] We note that the trial court determined in its posttrial opinion to deny reconsideration that principles of equity could be invoked to disregard the corporate form and treat the parties as partners for purposes of the alleged oral contract. However, the record does not indicate that plaintiff sought to invoke the court's equity jurisdiction to pursue a contract claim. See, generally, *Anzaldua v Band*, 457 Mich 530, 538-539, n 5; 578 NW2d 306 (1998) (discussing a court's authority with respect to equitable claims). The case was tried entirely by a jury on legal claims. In any event, as a general rule, the corporate structure is respected, *Bitar v Wakim*, 456 Mich 428, 431; 572 NW2d 191 (1998), and partnership law will apply the analogist rules for piercing the corporate veil in determining whether a partnership should be treated as a distinct legal entity from the individuals who compose it, *Chisholm v Chisholm Construction Co*, 298 Mich 25, 30-31; 298 NW 390 (1941). Treating the parties' relationship as a partnership, thus, does not save plaintiff's contract claim because it is necessary that plaintiff show that the contract was enforceable by him in his status as a guarantor or creditor.

[2] Although plaintiff claimed exemplary damages for the tortious interference claim, the jury's finding that plaintiff was not entitled to exemplary damages renders any issue on exemplary damages moot.