STATE OF MICHIGAN

COURT OF APPEALS

MHR CONCEPTS, INC.,

Plaintiff-Appellee/Cross-Appellant,

v

SEROS NORTH, INC.,

Defendant/Cross-Appellee,

and

THEODORE XENOS,

Defendant-Appellant/Cross-Appellee.

UNPUBLISHED
June 8, 1999

No. 199954
Macomb Circuit Court
LC No. 92-000126 CK

Before: Sawyer, P.J., and Bandstra and R.B. Burns*, JJ.

PER CURIAM.

Defendant Theodore Xenos appeals as of right from a circuit court order entering judgment on a jury verdict against him personally in the amount of $34,328.59. Plaintiff filed a cross-appeal challenging the court's order on the basis that it was wrongfully denied statutory interest on the judgment. We reverse and remand.

On appeal, defendant Xenos argues that there was insufficient evidence presented at trial to support the jury verdict against him individually because all the evidence established that he was acting in his capacity as an agent for defendant Seros North, Inc., during negotiations with plaintiff for the sale of the liquor license. Thus, he contends that the trial court ignored the corporate structure, as did the jury, and erred in denying his motion for judgment notwithstanding the verdict (JNOV) as to the issue of personal liability. We agree.

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

On appeal, this Court reviews a trial court's grant or denial of a motion for JNOV de novo. *Forge v Smith*, 458 Mich 198, 204; 580 NW2d 876 (1998). A motion for JNOV should be granted only where there was insufficient evidence presented at trial to create an issue for the jury. *Wilson v Gen'l Motors Corp*, 183 Mich App 21, 36; 454 NW2d 405 (1990). In reviewing a trial court's ruling on a motion for JNOV, this Court must view the evidence and all legitimate inferences from it in the light most favorable to the nonmoving party to determine if the evidence failed to establish a claim as a matter of law. *Jones v Powell*, 227 Mich App 662, 676; 577 NW2d 130 (1998); *McLemore v Detroit Receiving Hosp & Univ Medical Center*, 196 Mich App 391, 395; 493 NW2d 441 (1992). If the evidence presents a situation where reasonable minds could differ, the question should be left for the jury to resolve and JNOV is improper. *McLemore*, *supra*.

"As a general proposition, the law treats a corporation as an entirely separate entity from its stockholders, even where only one person owns all the corporation's stock." *Foodland Dist v Al-Naimi*, 220 Mich App 453, 456; 559 NW2d 379 (1996). However, where the corporate fiction is used to subvert justice, the corporate entity may be ignored. *Id.* This concept is referred to as piercing the corporate veil, and is typically used to protect corporate creditors where the stockholders have used the corporate structure to avoid legal obligations. *Id.* While Michigan courts have not delineated a precise rule for determining when the corporate entity may be disregarded, this Court has announced the following standard for piercing the corporate veil:

> First, the corporate entity must be a mere instrumentality of another entity or individual. Second, the corporate entity must be used to commit a fraud or wrong. Third, there must have been an unjust loss or injury to the plaintiff. [*Id.* at 457, quoting *SCD Chemical Dist, Inc v Medley*, 203 Mich App 374, 381; 512 NW2d 86 (1994).]

In addition, while the corporate entity may not be pierced absent a showing of fraud or injustice, where corporate officials participate individually in fraudulent or tortious conduct, they may be held personally responsible, regardless of whether they are acting on their own behalf or on behalf of the corporation. *Joy Management Co v City of Detroit*, 183 Mich App 334, 340; 455 NW2d 55 (1990); *Attorney Gen'l v Ankersen*, 148 Mich App 524, 557; 385 NW2d 658 (1986).

In this case, the evidence introduced by plaintiff at trial was not sufficient to establish that Seros North was a "mere instrumentality" of Xenos himself, such that he should be held personally liable for plaintiff's damages. The parties and the court repeatedly admonished the jury that when they referred to defendant Xenos' conduct, they were actually referring to the corporation's conduct, represented by its agent and only shareholder, Xenos. Plaintiff conceded at trial that defendant Xenos was acting on behalf of the corporation when he negotiated the purchase agreement and made decisions pertaining to the liquor license. Moreover, defendant Xenos did not personally own the liquor license at issue; rather, the corporation did. Therefore, defendant Xenos was not authorized to transfer the license individually, and could only have been acting in his capacity as an agent of the corporation. Furthermore, although the cashier's check issued by plaintiff was made out to Theodore Xenos, rather than Seros North, defendant Xenos signed the check as a corporate agent of the company.

Further, the evidence was not sufficient to conclude that defendant Xenos personally engaged in fraudulent or illegal activity. In an effort to pierce the corporate veil, the alleged fraud cannot be presumed; rather, it must be proven by clear and convincing evidence. *Foodland, supra*. Defendant Xenos did make statements to plaintiff to the effect that Seros North had possession and title of a valid liquor license that could be transferred to plaintiff. This could arguably be construed as a misrepresentation given the fact that the Liquor Control Commission (LCC) concluded that the license was not owned by defendant Xenos and was not transferable. However, we find that the evidence does not support a finding that defendant Xenos personally engaged in fraudulent or wrongful conduct during negotiations with plaintiff. Again, we find that defendant Xenos was acting on behalf of the corporation when he made the representation as well as when he signed the purchase agreement. Moreover, the testimony at trial suggested that defendant Xenos had a good-faith belief that Seros North still owned the license held in escrow after a fire destroyed the building, and that the matter would be resolved with the LCC and the transfer would be completed.

In light of these facts, there was no clear and convincing evidence of fraud or wrongful conduct sufficient to impose personal liability on defendant Xenos. The imposition of such liability, in the absence of a clear showing of fraud or illegality, would contradict the purpose and policy behind the laws governing corporations. One important, and entirely permissible, benefit of incorporating a business is to avoid personal liability when a legitimate, but unsuccessful, corporate decision goes astray.

We also agree with defendant Xenos' argument that the trial court's order denying his motion for JNOV on the basis that he personally engaged in tortious interference with a business relationship or expectancy was erroneous. In order to prove a tortious interference with a business relationship or expectancy, a plaintiff must prove the following elements:

> [1] the existence of a valid business relationship or expectancy, [2] knowledge of the relationship or expectancy on the part of the defendant, [3] an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and [4] resultant damage to the plaintiff. [*BPS Clinical Laboratories v Blue Cross and Blue Shield of Michigan (On Remand)*, 217 Mich App 687, 698-699; 552 NW2d 919 (1996).]

Where a plaintiff seeks to hold a corporate agent or officer personally responsible for interfering with a business relationship, the plaintiff must show that the corporate agent or officer was acting outside the scope of authority and without any business justification. *BPS Clinical Laboratories, supra* at 699; *Coleman-Nichols v Tixon Corp*, 203 Mich App 645, 657; 513 NW2d 441 (1994). Indeed, corporate agents or officers cannot be held liable where they act on their company's behalf, rather than for personal benefit. *Reed v Michigan Metro Girl Scout Council*, 201 Mich App 10, 13; 506 NW2d 231 (1993); *Feaheny v Caldwell*, 175 Mich App 291, 305; 437 NW2d 358 (1989).

Defendant Xenos may have engaged in objectionable conduct by virtue of his efforts to obtain an injunction prohibiting the LCC from issuing any license to plaintiff until the dispute between plaintiff and defendants was resolved. However, we find that the third element of the cause of action has not been proven. Specifically, plaintiff failed to establish that Xenos' conduct caused a breach or

termination of the business relationship between plaintiff and Stefanowski. To the contrary, their agreement for the purchase of a resort liquor license was consummated and plaintiff received the liquor license. Thus, while defendant Xenos' tactics may have been wrong, the business relationship between plaintiff and Stefanowski survived, and the purpose or objective of their agreement (transfer of the license) was achieved. Any damages that resulted from the delay in plaintiff receiving the license were attributable to the breach of contract by defendant Seros North; they were not the result of any tortious interference by Xenos.

On cross-appeal, plaintiff argues that the trial court erroneously failed to include statutory interest at the rate of twelve percent in the final judgment. Plaintiff is correct that this is the rate provided for, from the date of filing the complaint until the judgment's satisfaction. MCL 600.6013; MSA 27A.6013. However, plaintiff also argued to the jury that it was entitled to interest computed at four percent from the date of the alleged breach of contract until the verdict was rendered. Thus, with respect to the time period from the alleged breach of contract until the verdict (including the post-complaint and pre-verdict time period at issue here), plaintiff introduced confusion as to the appropriate interest rate to be applied and cannot on appeal argue that the interest awarded as part of the final judgment for that period is erroneous. *Byrne v Schneider's Iron, Inc*, 190 Mich App 176, 183-184; 475 NW2d 854 (1991). However, no such confusion was introduced by plaintiff with respect to the time period following the jury's verdict. We have earlier concluded that the jury award was properly based on plaintiff's breach of contract claim, not plaintiff's various tort claims. Because the breach of contract action was based on a written instrument, plaintiff is entitled to interest at the rate of twelve percent per year from the date of the jury's verdict until satisfaction of the judgment. See MCL 600.6013(5); MSA 27A.6013(5); *Yaldo v North Pointe Ins Co*, 457 Mich 341; 578 NW2d 274 (1998).

We reverse and remand for entry of judgment against defendant Seros North, Inc., only and for calculation and imposition of interest on the judgment from the date of the jury's verdict at the rate of twelve percent. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ Robert B. Burns