STATE OF MICHIGAN

COURT OF APPEALS

BRADLEY BENDER,

Plaintiff-Appellant,

v

JAMES WOLFENBARGER,

Defendant-Appellee.

UNPUBLISHED
July 27, 1999

No. 210803
Oakland Circuit Court
LC No. 97-001438 CZ

Before: Doctoroff, P.J., Markman and J.B.Sullivan*, JJ.

PER CURIAM.

In this action for contribution, plaintiff appeals as of right from the order of the trial court granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(8). We affirm.

Plaintiff argues that the trial court engaged in impermissible factfinding in making its determination that neither plaintiff nor defendant was individually liable in the underlying action. We disagree. Appellate review of decisions regarding motions for summary disposition is de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone; all factual allegations in support of the claim are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Simko v Blake*, 448 Mich 648, 654; 532 NW2d 842 (1995); *Kuhn v Secretary of State*, 228 Mich App 319, 323-324; 579 NW2d 101 (1998). The motion must be granted if no factual development could justify the plaintiff's claim for relief. *Spiek, supra* at 337.

Contribution is the partial payment made by each or any of jointly or severally liable tortfeasors who share a common liability to an injured party. *St Luke's Hospital v Giertz*, 458 Mich 448, 453; 581 NW2d 665 (1998). The right to contribution in Michigan is controlled entirely by statute, since there is no right to contribution at common law. *Reurink Bros Star Silo, Inc v Clinton Co Road Comm'rs*, 161 Mich App 67, 70; 409 NW2d 725 (1987). MCL 600.2925a *et seq.*; MSA 27A.2925(1) *et seq.*, is the statute which provides for contribution between tortfeasors. *Klawiter v Reurink*, 196 Mich App 263, 264; 492 NW2d 801 (1992).

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

In *Reurink, supra,* at 72-73, this Court stated that MCL 600.2925a(3); MSA 27A.2925(1)(3) "implicitly" sets forth the elements of a claim for contribution by a *settling* tortfeasor as follows: (1) there must be joint liability on the part of the plaintiff and defendant; (2) the plaintiff must have paid more than the plaintiff's pro-rata share of the common liability; (3) the settlement entered into by the plaintiff must extinguish the liability of the defendant; (4) a reasonable effort must have been made to notify the defendant of the pendency of the settlement negotiations; (5) the defendant must have been given a reasonable opportunity to participate in settlement negotiations; and (6) the settlement must have been made in good faith.

In this case, we need address only the first element, i.e., the requirement of joint liability on the part of the plaintiff and defendant. In its Opinion and Order granting summary disposition to defendant for plaintiff's failure to state a claim on which relief could be granted, see *Boggerty v Wilson,* 160 Mich App 514, 530; 408 NW2d 809 (1987) (courts speak through their written orders, not their oral statements), the trial court stated that neither plaintiff nor defendant was found to be personally liable in the underlying action, but rather only the corporation was found to be liable. Contrary to plaintiff's assertion that the trial court engaged in impermissible factfinding, we conclude that the trial court was merely reiterating what occurred in the underlying action, i.e., that only the corporation was found liable, to provide support for its conclusion that plaintiff had failed to state a claim on which relief could be granted. Since the trial court reached the right result, we conclude that any additional "factfinding" was surplusage at best. *Lane v KinderCare Learning Centers, Inc,* 231 Mich App 689, 697; 588 NW2d 715 (1998).

The Business Corporation Act, MCL 450.1101 *et. seq.;* MSA 21.200(101) *et. seq.,* provides in § 1317(4) that, "Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he or she may become personally liable by reason of his or her own acts or conduct." In *Foodland Distributors v Al-Naimi,* 220 Mich App 453, 456; 559 NW2d 379 (1996), this Court recently reiterated the general proposition that the law treats a corporation as an entirely separate entity from its stockholders, even where one person owns all the corporation's stock.

In this case, the suit in the underlying action named various individuals and corporations as defendants. However, as to plaintiff and defendant, only the corporation of which they were sole officers, directors, employees and shareholders was named as a defendant. Both the order granting default judgment and the stipulation and order of dismissal in the underlying action refer only to plaintiff and defendant's corporation. Indeed, plaintiff's complaint refers to the "excavation company which was sued for negligence . . ." While ¶11 of plaintiff's complaint makes a passing reference to "the liability of the Defendant," plaintiff failed to allege facts or law supporting his apparent position that the corporate liability somehow conferred joint personal liability on plaintiff and defendant in the underlying action, a prerequisite for contribution. *Klawiter, supra* at 267; *Reurink, supra,* at 72. Plaintiff's reliance on *Royal Indemnity Co v H S Watson Co,* 93 Mich App 491; 287 NW2d 278 (1979), is misplaced as that case does not stand for the proposition that corporate liability confers personal liability on directors, shareholders or the like.

While plaintiff makes a vague argument on appeal that defendant might be liable under the doctrine of "piercing the corporate veil," he has provided no legal authority to support this assertion. *Weiss v Hodge (After Remand),* 223 Mich App 620, 637; 567 NW2d 468 (1997). In any event, this Court has required the following for determining whether the corporate veil may be pierced so that its shareholders may be held liable for the acts of the corporation: 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; and third, there must have been an unjust loss or injury to the plaintiff. *Foodland Distributors, supra,* at 457. Plaintiff's complaint contains no allegations to support his contention that the corporate entity was a "mere instrumentality" of himself or defendant and that defendant might be personally liable for the corporation's negligence on this basis. Moreover, "[t]he general rule is that the corporate veil is pierced only for the benefit of third parties, and never for the benefit of the corporation or its stockholders." *In re RCS Engineered Products Co, Inc*, 102 F3d 223, 226 (CA 6, 1996), citing 18 Am Jur 2d Corporations § 46 (1985).

Affirmed.

/s/ Martin M. Doctoroff
/s/ Stephen J. Markman
/s/ Joseph B. Sullivan