STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL L. DAYMON and KATHRYN DAYMON, Plaintiffs-Appellees, v TED L. FUHRMAN, Defendant-Appellant.	UNPUBLISHED October 5, 2004 No. 249007 Gratiot Circuit Court LC No. 00-006637-CZ

Before: Murray, P.J., and Markey and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right from an order piercing the corporate veil and holding defendant personally liable for a default judgment plaintiffs previously obtained against defendant's now-defunct corporation, of which defendant was the sole shareholder. Plaintiffs sued defendant personally, alleging that the corporation had been rendered insolvent, precluding them from collecting their judgment, because of wrongful actions by defendant. The trial court concluded that piercing the corporate veil was warranted. We affirm.

A trial court's decision whether to pierce the corporate veil is reviewed de novo because of the equitable nature of the inquiry. *Foodland Distributors v Al-Naimi*, 220 Mich App 453, 456; 559 NW2d 379 (1996). However, the trial court's decision "will not be reversed unless the factual findings are clearly erroneous or the reviewing court is convinced that it would have reached a different result had it occupied the trial court's position." *Law Offices of Lawrence J. Stockler v Rose*, 174 Mich App 14, 43-44; 436 NW2d 70 (1989). Statutory interpretation and application of the law to facts are both issues that are reviewed de novo. *In re Blackshear*, 262 Mich App 101, 107; ___ NW2d ___ (2004). A trial court's findings of fact are reviewed for clear error. *Merkur Steel Supply Inc v City of Detroit*, 261 Mich App 116, 124; 680 NW2d 485 (2004).

In general, a corporation is treated as an entity that is completely separate from its stockholders, even if there is only a single stockholder. *Foodland Distributors*, *supra*. However, that independence is a fiction that may be ignored by the courts if it is used to subvert justice. *Id*. "There is no single rule delineating when the corporate entity may be disregarded." *Id*. Fraud, illegality, or injustice may warrant piercing the corporate veil, but each case must be decided on its own unique facts. *Dep't of Consumer Industry Services v Shah*, 236 Mich App 381, 393; 600

NW2d 406 (1999). However, in making this determination this Court considers the following three elements:

> 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. [*Foodland Distributors, supra* at 457, quoting *SCD Chemical Distributors, Inc v Medley*, 203 Mich App 374, 381; 512 NW2d 86 (1994).]

We conclude that the trial court did not clearly err in determining that defendant treated his corporation as his "alter ego," satisfying the first prong. It was undisputed that for years defendant utilized the corporation to pay his personal bills. And, although defendant's expert testified that defendant properly accounted for each and every such transaction, the trial court specifically found that defendant's "reconciliation of his 'personal revolving account' or 'shareholder loan account' with the corporation is unpersuasive." Because we are reviewing this finding on the written record, we must defer to the trial court's findings when based upon the credibility of evidence and witnesses. *Dragoo v Dragoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). Additionally, the record supports the trial court's finding that defendant's use of the corporate checking account was done without contemporaneous shareholder loan or corporate documentation. The trial court did not err in finding that plaintiff proved that the corporation was the mere instrumentality of defendant.

We also conclude that the trial court did not err in finding that the corporate veil should be pierced in this case. In so holding, we are mindful that this Court has held that these cases usually come "down to a question of good faith and honesty in the use of the corporate privilege for legitimate ends." *Foodland Distributors*, *supra* at 460, quoting *Herman v Mobile Homes Corp*, 317 Mich 233, 246; 26 NW2d 757 (1947). We recognize that there is no evidence revealing, nor any finding by the trial court, that defendant set out *deliberately* either to wrong creditors or to avoid any legal obligations. Nevertheless, the trial court found that a wrong had been committed by defendant's "flexible' approach to the corporation's distinct existence [which] had the foreseeable effect of perpetrating a wrong resulting in unjust loss to [plaintiffs]." Continuing, the court found that had defendant dissolved the corporation in accordance with the law, rather than in a way he simply decided was best, plaintiffs could have received notice and a voice in how or in what amount assets were distributed. We cannot conclude that these findings were clearly erroneous.

The facts presented during the bench trial support the trial court's conclusion that there was no specific plan for dissolution, and that the dissolution was not in compliance with MCL 450.1855a of the Business Corporation Act, MCL 450.1101, *et seq*. Additionally, there was no dispute that plaintiffs were never given notice to voice any concerns or make any claims during the dissolution. And, although given their unsecured status plaintiffs may not have successfully obtained any funds had they had such notice, they may have taken the opportunity to object to defendant receiving corporate assets at the time of dissolution without consideration. The closing of business and transfer of the significant corporate assets to defendant without notice to plaintiffs, recent judgment creditors, was wrong and caused injury to plaintiffs. *Foodland Distributors*, *supra*.

Our Supreme Court, as well as this Court, has repeatedly recognized that cases involving the piercing of a corporate veil are fact intensive and often hinge on the equities of the case. See *Shah, supra*; *Kline v Kline*, 104 Mich App 700, 703; 305 NW2d 297 (1981). A finding of fraud is not a necessary prerequisite to piercing the corporate veil. *Papo v Aglo Restaurants*, 149 Mich App 285, 302 n 15; 386 NW2d 177 (1986). We therefore conclude that, based upon the facts found by the trial court, it was not error to pierce the corporate veil and hold defendant personally responsible for the debt owed plaintiffs.[1]

Affirmed.

/s/ Jane E. Markey
/s/ Peter D. O'Connell

[1] The trial court also concluded that defendant had violated the Uniform Fraudulent Transfer Act, MCL 566.31, *et seq*. This finding was in conjunction with the finding that defendant's use of the corporation was wrong and injured plaintiffs. Defendant claims that the trial court's reliance on this statute was in error, since it was not effective until December 30, 1998, allegedly after the dates relevant to this case. However, the same facts found by the court could have supported a violation under the act's predecessor, the Uniform Fraudulent Conveyance Act, MCL 566.11, *et seq*., so any error in this regard was harmless.