REL: December 13, 2019

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1180055

Ex parte Valley National Bank

PETITION FOR WRIT OF MANDAMUS

(In re: Jesse Blount, Wilson Blount, and William Blount

v.

Valley National Bank f/k/a Aliant Bank)

(Montgomery Circuit Court, CV-18-901327)

On Application for Rehearing

STEWART, Justice.

This Court's opinion of July 12, 2019, is withdrawn, and the following is substituted therefor.

Valley National Bank ("VNB")[1] petitions this Court for a writ of mandamus directing the Montgomery Circuit Court ("the trial court") to dismiss a declaratory-judgment action filed against VNB by Jesse Blount, Wilson Blount, and William Blount. We grant the petition in part and deny it in part.

Facts and Procedural History

According to the materials submitted by the parties, William owned a 33% interest in Alabama Utility Services, LLC ("AUS").[2] William also served as the president of WWJ Corporation, Inc. ("WWJ"), and WWJ managed AUS. Wilson and Jesse, William's sons, owned all the stock of WWJ. In May 2013, William transferred his 33% interest in AUS to WWJ, and WWJ then owned all the interest in AUS.

In July 2015, VNB obtained a $905,599.90 judgment against William in an action separate from the underlying action. On August 31, 2015, Asset Management Professionals, LLC, purchased from WWJ all the assets of AUS for $1,600,000.

On July 17, 2018, the Blounts filed a declaratory-

[1]VNB is the successor to Aliant Bank.

[2]The Blounts' complaint states that William owned a 24.75% interest in AUS; a certificate of transfer that William executed transferring his membership interest in AUS states that he owned a 33% interest.

judgment action in the trial court seeking a judgment declaring

> "that a) William's transfer of his interest in AUS to WWJ was not fraudulent as to [VNB], b) William was not the alter ego of AUS or WWJ, c) the sale of AUS did not result in a constructive trust in favor of [VNB], and d) the [Blounts] did not engage in a civil conspiracy."

VNB responded by filing a motion to dismiss pursuant to Rule 12(b)(1) and (b)(6), Ala. R. Civ. P., asserting the lack of subject-matter jurisdiction and the lack of a justiciable controversy. The parties were referred to mediation, which was unsuccessful.

On September 7, 2018, VNB filed an action in the Jefferson Circuit Court under the Alabama Uniform Fraudulent Transfer Act, § 8-9A-1 et seq., Ala. Code 1975 ("the AUFTA"), against the Blounts and others in which it asserted that William had fraudulently transferred assets and sought to pierce the corporate veil of WWJ.

On October 4, 2018, the trial court denied VNB's motion to dismiss. VNB timely filed its petition for the writ of mandamus in this Court. According to the parties, the litigation in both the trial court and in the Jefferson

Circuit Court was stayed by agreement pending the resolution of this mandamus petition.

Standard of Review

> "A ruling on a motion to dismiss is reviewed without a presumption of correctness. Nance v. Matthews, 622 So. 2d 297, 299 (Ala. 1993). This Court must accept the allegations of the complaint as true. Creola Land Dev., Inc. v. Bentbrooke Housing, L.L.C., 828 So. 2d 285, 288 (Ala. 2002). ...
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> "For a declaratory-judgment action to withstand a motion to dismiss there must be a bona fide justiciable controversy that should be settled. Anonymous v. Anonymous, 472 So. 2d 640, 641 (Ala. Civ. App. 1984); Smith v. Alabama Dry Dock & Shipbuilding Co., 293 Ala. 644, 309 So. 2d 424, 427 (1975). The test for the sufficiency of a complaint seeking a declaratory judgment is whether the pleader is entitled to a declaration of rights at all, not whether the pleader will prevail in the declaratory-judgment action. Anonymous, 472 So. 2d at 641."

Harper v. Brown, Stagner, Richardson, Inc., 873 So. 2d 220, 223 (Ala. 2003).

> "A writ of mandamus is an extraordinary remedy which requires a showing of (a) a clear legal right in the petitioner to the order sought, (b) an imperative duty on the respondent to perform, accompanied by a refusal to do so, (c) the lack of another adequate remedy, and (d) the properly invoked jurisdiction of the court. Ex parte Bruner, 749 So. 2d 437, 439 (Ala. 1999)."

Ex parte McInnis, 820 So. 2d 795, 798 (Ala. 2001). "This Court has held that a writ of mandamus is an appropriate means by which to review the following: subject-matter jurisdiction, Ex parte Johnson, 715 So. 2d 783 (Ala. 1998)[,] ... [and] nonjusticiability as a component of subject-matter jurisdiction, Ex parte Valloze, 142 So. 3d 504 (Ala. 2013). ..." Ex parte U.S. Bank Nat'l Ass'n, 148 So. 3d 1060, 1064 (Ala. 2014).

Discussion

At the outset, we must address a motion filed by VNB in this Court seeking to strike certain exhibits that are attached to the Blounts' response to VNB's mandamus petition. Exhibits 2, 3, 4, and 5 to the Blounts' responses appear to include documentation related to William's transfer of his ownership interest in AUS to WWJ and a valuation of shares in AUS. VNB asserts that those documents are not part of the trial-court record and that, therefore, they should be stricken. Exhibits 15 and 16 appear to be correspondence related to settlement negotiations between the parties and, likewise, are not part of the trial-court record. The Blounts did not respond to VNB's motion to strike. Because this Court does not review materials that were not considered by the

trial court, see, e.g., Ex parte Alabama Med. Ctr., 109 So. 3d 1114, 1116 (Ala. 2012), and because the Blounts have not opposed VNB's motion, we grant VNB's motion to strike.

VNB challenges the trial court's exercise of subject-matter jurisdiction over the declaratory-judgment action. VNB argues that a claim under the AUFTA, under which the Blounts could be liable, is a tort claim and that a declaratory-judgment action is not available to a potential tort defendant to establish nonliability for a tort.

In support of its arguments, VNB relies on Ex parte Valloze, 142 So. 3d 504 (Ala. 2013). In Valloze, which involved petitions relating to two separate underlying actions, the owners' motor homes were destroyed by a fire, and their insurance companies declared each motor home to be a total loss. The insurance companies advised Tiffin Motor Homes, Inc., the manufacturer of the motor homes, of the potential for a claim against it based on an alleged defect in the motor homes. Tiffin brought a declaratory-judgment action against the owners, the insurance companies, and other entities involved in the manufacturing process, alleging a justiciable controversy existed as to the origin of the fire, the fault and liability for the fire and the resulting loss,

and the amount of damages. The defendants filed motions to dismiss the actions, which were denied. The insurance companies, among other defendants, petitioned this Court for a writ of mandamus, asserting that no justiciable controversy existed because they had not decided whether to pursue their subrogation rights against Tiffin and had notified Tiffin only of the potential for a claim against it. Tiffin responded that the insurance companies had stated that they would pursue litigation unless Tiffin agreed to settlement terms offered by the insurance companies.

In addition to determining that no justiciable controversy existed, this Court stated:

> "[D]eclaratory-judgment actions are not intended to be a vehicle for potential tort defendants to obtain a declaration of nonliability. The 'plaintiff [has a] right to choose a forum.' Ex parte Integon Corp., 672 So. 2d 497, 500 (Ala. 1995). Using declaratory relief in the manner employed by Tiffin in these cases deprives tort plaintiffs of this right. It also deprives such plaintiffs, within the confines of the applicable statute of limitations, of the ability to elect the timing for bringing such an action, which may affect a plaintiff's preparation for litigation. Further, such use of declaratory relief 'reverse[s] the roles of the parties' in a way that 'would jeopardize those procedures which the law has traditionally provided to injured parties by which to seek judicial relief.' Cunningham Bros.[, Inc. v. Bail], 407 F.2d [1165] at 1168 [(7th Cir. 1969)]. In short,

> declaratory-judgment actions are ill suited to resolving tort claims."

142 So. 3d at 511.

The Blounts argue that they are not seeking a "declaration of nonliability" and that Valloze is distinguishable because, they assert, an action brought pursuant to the AUFTA sounds in equity, not in tort. We are not called upon to decide, however, whether a claim under the AUFTA sounds in tort, because the Blounts have not brought a claim under the AUFTA. The Blounts filed a declaratory-judgment action in the trial court seeking a judgment declaring that "William's transfer of his interest in AUS to WWJ was not fraudulent as to [VNB]." In other words, the Blounts sought a determination that William did not fraudulently transfer assets, which involves a determination of whether William committed fraud.

Fraud is recognized as a tort under Alabama law. See, e.g., Tomlinson v. G.E. Capital Dealer Distrib. Fin., Inc., 646 So. 2d 139, 141 (Ala. Civ. App. 1994) ("Fraud is a tort and, thus, an action ex delicto."). See also Black's Law Dictionary 775 (10th ed. 2014) ("Fraud is usu[ally] a tort, but in some cases (esp. when the conduct is willful) it may be

a crime."). Moreover, this Court has recognized the intent to defraud as a necessary element of a fraudulent-conveyance claim based on actual fraud. See, e.g., Granberry v. Johnson, 491 So. 2d 926, 928 (Ala. 1986)(explaining the elements necessary to declare a conveyance fraudulent: "(1) that the creditor was defrauded, (2) that the debtor intended to defraud, and (3) that the conveyance was of property out of which the creditor could have realized his or her claim or some portion of it" (citing Roddam v. Martin, 285 Ala. 619, 235 So. 2d 654 (1970))). See also Cox v. Hughes, 781 So. 2d 197, 201 (Ala. 2000)(recognizing the necessity of the element of intent in declaring a conveyance to be fraudulent); and Carter v. Longshore, 230 Ala. 486, 487, 162 So. 115, 115 (1935). Based on the foregoing authorities, we determine that the Blounts' claim, as alleged in their complaint, seeks a determination that William did not commit fraud in conveying assets, which sounds in tort. The Blounts' complaint, insofar as it seeks a judgment declaring that William's transfer of his interest in AUS to WWJ was not fraudulent as to VNB and that the Blounts did not engage in a civil conspiracy, seeks a determination of nonliability for alleged torts; thus, a declaratory-judgment action is inappropriate as a means of

resolving those issues.[3] Valloze, 142 So. 3d at 511. Accordingly, VNB has demonstrated a clear legal right to have its motion to dismiss granted as to those claims, see Ex parte McInnis, 820 So. 2d at 798, and we grant the petition as to those claims.

The Blounts also seek a declaration that "William was not the alter ego of WWJ or AUS" ("the alter-ego claim") and that the sale of AUS's assets did not result in a constructive trust in favor of VNB ("the constructive-trust claim"). Those claims are not based in tort and are appropriately resolved by a declaratory-judgment action. VNB asserts, however, that there is no justiciable controversy because it had not elected to pursue a claim against the Blounts at the time the declaratory-judgment action was filed and because "the harm giving rise to VNB's rights ha[d] already occurred" when William allegedly fraudulently transferred assets. This Court has explained:

> "'All that is required for a declaratory judgment action is a bona fide justiciable controversy.' Gulf South Conference v. Boyd, 369 So. 2d 553, 557 (Ala. 1979) (citation omitted).

[3]We note that a civil-conspiracy claim requires an underlying tort. See Goolesby v. Koch Farms, LLC, 955 So. 2d 422, 430 (Ala. 2006).

> "'To be justiciable, the controversy must be one that is appropriate for judicial determination. It must be a controversy which is definite and concrete, touching the legal relations of the parties in adverse legal interest, and it must be a real and substantial controversy admitting of specific relief through a decree. "A controversy is justiciable when there are interested parties asserting adverse claims upon a state of facts which must have accrued wherein a legal decision is sought or demanded." Anderson, Actions for Declaratory Judgments, Volume 1, § 14.'
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> "Copeland v. Jefferson County, 284 Ala. 558, 561, 226 So. 2d 385, 387 (1969)."

MacKenzie v. First Alabama Bank, 598 So. 2d 1367, 1370 (Ala. 1992). "This court has repeatedly held where a [complaint] for declaratory judgment shows a bona fide justiciable controversy, the [motion to dismiss] should be overruled." Southern Ry. v. Kendall, 288 Ala. 430, 432, 261 So. 2d 752, 754 (1972). Furthermore, the Declaratory Judgment Act, § 6-6-220 et seq., Ala. Code 1975, provides that "its purpose is to settle and to afford relief from uncertainty and insecurity with respects to rights, status, and other legal relations and is to be liberally construed and administered." § 6-6-221, Ala. Code 1975.

In seeking a declaratory judgment as to the alter-ego claim and the constructive-trust claim, the Blounts are "'"asserting adverse claims upon a state of facts which must have accrued"'" and seeking a legal decision "'touching the legal relations of the parties in adverse legal interest'"; therefore, as to those claims, the trial court has before it a justiciable controversy. MacKenzie, 598 So. 2d at 1370 (quoting Copeland v. Jefferson Cty., 284 Ala. 558, 561, 226 So. 2d 385, 387 (1969), quoting in turn 1 Anderson, Actions for Declaratory Judgments § 14). Although VNB asserts that it had not elected to pursue a claim against the Blounts at the time the declaratory-judgment action was filed, the materials submitted by the parties indicate that VNB had gone so far as to provide the Blounts' attorney with a copy of the complaint it intended to file. The Blounts were "not required to wait until [VNB] sued [them] to have [their] rights and obligations determined. [The Blounts'] declaratory-judgment action was an alternative relief available to [them], it was not dependent upon the absence of another adequate remedy." Harper, 873 So. 2d at 225. See also § 6-6-222, Ala. Code 1975 ("Courts of record, within their respective jurisdictions, shall have power to declare rights, status, and other legal relations

whether or not further relief is or could be claimed."). Therefore, with regard to the alter-ego claim and the constructive-trust claim, VNB has not demonstrated "a clear legal right" to have those claims dismissed. Ex parte McInnis, 820 So. 2d at 798 (citing Ex parte Bruner, 749 So. 2d 437, 439 (Ala. 1999)). Accordingly, we deny the petition insofar as it seeks the dismissal of the alter-ego claim and the constructive-trust claim.

APPLICATION GRANTED; OPINION OF JULY 12, 2019, WITHDRAWN; OPINION SUBSTITUTED; MOTION TO STRIKE GRANTED; PETITION GRANTED IN PART AND DENIED IN PART; WRIT ISSUED.

Bolin and Sellers, JJ., concur.

Parker, C.J., and Mitchell, J., concur in part and dissent in part.

Shaw, Bryan, and Mendheim, JJ., concur in part, concur in the result in part, and dissent in part.

PARKER, Chief Justice (concurring in part and dissenting in part).

Regarding Valley National Bank's motion to strike, I concur with the main opinion.

Regarding the fraudulent-transfer and civil-conspiracy issues, I agree with Justice Shaw that the question whether a particular declaratory-judgment action is an attempt to preempt an opponent's prospective tort claim is a question of failure to state a claim, not a question of justiciability, and thus not a question of subject-matter jurisdiction (even though this Court previously addressed that tort-preemption question in a mandamus case, Ex parte Valloze, 142 So. 3d 504, 510-11 (Ala. 2013)). Thus, I would not address that tort-preemption question in the context of a mandamus petition. Therefore, I dissent from this aspect of the main opinion.

Nonetheless, regarding the justiciability of each of the four issues in the declaratory-judgment action filed by Jesse Blount, Wilson Blount, and William Blount (fraudulent transfer, alter ego, constructive trust, and civil conspiracy), the focus of a justiciability analysis is properly on whether there exists a ripe legal controversy between the parties. See Ex parte Riley, 11 So. 3d 801, 806-

08 (Ala. 2008). Here, I believe that each of the four issues was justiciable because the circuit court had before it evidence from which it reasonably could have concluded that a lawsuit by Valley National Bank involving each issue was imminent, and thus the controversy was ripe, at the time the Blounts filed the action. See Harper v. Brown, Stagner, Richardson, Inc., 73 So. 2d 220 (Ala. 2003). Thus, I agree with the justiciability analysis in the main opinion as to the issues of alter ego and constructive trust, but I would also apply that analysis to the issues of fraudulent transfer and civil conspiracy. Therefore, I concur with the main opinion regarding denial of the petition as to the alter-ego and constructive-trust issues but dissent from the opinion regarding granting the petition as to the fraudulent-transfer and civil-conspiracy issues.

Further, I believe that the respective analyses of justiciability in Harper and Valloze are in irreconcilable conflict. Although the parties do not attack either case here, in my view one or the other will eventually have to be overruled. As seen from my conclusion regarding justiciability in this case, I favor Harper's analysis. I believe that Valloze would restrict justiciability so narrowly

that it would thwart the purpose of the Declaratory Judgment Act "to settle and to afford relief from uncertainty and insecurity with respects to rights, status, and other legal relations," a purpose for which the Act "is to be liberally construed and administered." § 6-6-221, Ala. Code 1975. Moreover, Valloze would bar virtually all declaratory-judgment actions where the opponent has an intertwined potential claim, because Valloze would require both that the opponent's lawsuit be "inevitable" (i.e., imminent) and that the plaintiff's inability to file a declaratory-judgment action would result in significant "delay" in resolution of the plaintiff's legal rights, 142 So. 3d at 510. Those two possibilities are mutually exclusive. Further, to the extent that Valloze would require that the opponent has "elected to pursue a claim" before a declaratory-judgment claim is ripe, see id., Valloze would absolutely bar all potentially preemptive declaratory-judgment actions. If the plaintiff must wait for the opponent to actually file a claim, then the plaintiff's declaratory-judgment action will inevitably be barred by the abatement statute, § 6-5-440, Ala. Code 1975. See, e.g., Ex parte Nautilus Ins. Co., 260 So. 3d 823, 825-32 (Ala. 2018) (holding that plaintiff's declaratory-judgment action, filed after the

opponent filed a related claim, was barred by the abatement statute).

Accordingly, I would deny the petition in toto.

MITCHELL, Justice (concurring in part and dissenting in part).

I concur with the Court's decision to grant the motion to strike filed by Valley National Bank ("VNB") and to grant its petition for a writ of mandamus directing the Montgomery Circuit Court to dismiss the action filed by Jesse Blount, Wilson Blount, and William Blount to the extent they seek a declaratory judgment on the identified fraudulent-transfer and civil-conspiracy issues. I dissent, however, from the decision to deny VNB's petition to the extent it seeks a writ directing the trial court to dismiss the Blounts' request for a declaratory judgment on the related alter ego/piercing-the-corporate-veil and constructive-trust issues. In sum, I would issue a writ of mandamus and direct the trial court to dismiss the entirety of the Blounts' declaratory-judgment action.

The effect of today's decision is that the Jefferson Circuit Court will decide fraudulent-transfer and civil-conspiracy claims asserted by VNB, while issues directly related to those claims -- whether the entities involved in the alleged fraudulent transfer were the alter egos of William Blount and whether a constructive trust should be imposed upon those entities' assets -- remain before the Montgomery Circuit Court. This creates the strong potential for dueling

proceedings on the alter ego/piercing-the-corporate-veil and constructive-trust issues. Indeed, VNB has specifically asserted alter ego/piercing-the-corporate-veil and constructive-trust "counts" in the complaint it filed in the Jefferson Circuit Court -- and those counts remain live in the Jefferson Circuit Court action.[4] Of course, it is appropriate

[4]It should be noted that piercing the corporate veil and imposing a constructive trust are not technically claims. A claim that a business entity is the alter ego of an individual and that the corporate veil should be pierced is not a cause of action but is instead a theory of liability that may enable a recovery on a recognized claim. See Ryals v. Lathan Co., 77 So. 3d 1175, 1179 (Ala. 2011) ("'A claim based on the alter ego theory is not in itself a claim for substantive relief, but rather is procedural. A finding of fact of alter ego, standing alone, creates no cause of action. It merely furnishes a means for a complainant to reach a second corporation or individual upon a cause of action that otherwise would have existed only against the first corporation.'" (quoting 1 Fletcher Cyclopedia Corporations § 41.10 (1990))). Nor does a claim requesting a constructive trust assert a cause of action; rather, a constructive trust is a remedy. See Radenhausen v. Doss, 819 So. 2d 616, 620 (Ala. 2001) (explaining that "a constructive trust is an equitable remedy; and a request to impose such a trust is not a cause of action that will stand independent of some wrongdoing"); Gulf States Steel, Inc. v. Lipton, 765 F. Supp. 696, 704 (N.D. Ala. 1990) ("[The] court's research has revealed no case in any jurisdiction that supports [the appellant's] argument that constructive trust constitutes a cause of action."). Nevertheless, allegations of alter ego/piercing the corporate veil and a request for imposition of a constructive trust are issues directly related to adjudication of fraudulent-transfer and civil-conspiracy claims.

for VNB to seek to litigate the alter ego/piercing-the-corporate-veil and constructive-trust issues in the action it filed in Jefferson Circuit Court, because those issues are intertwined with and routinely adjudicated alongside claims of fraudulent transfer and civil conspiracy. See, e.g., We Got Games, LLC v. E & D Ventures, LLC, 261 So. 32d 1224, 1227 (Ala. Civ. App. 2018) (describing the plaintiff's fraudulent-transfer and civil-conspiracy claims and noting the related requests to pierce the corporate veil and to impose a constructive trust).

As a result of this Court's decision, the Montgomery Circuit Court and the Jefferson Circuit Court have actions before them in which they will be called upon to decide the same issues. This is a circumstance that should be avoided because it strains scarce judicial resources, creates conditions ripe for litigation gamesmanship, and runs the risk of two courts reaching inconsistent results on the same issues. VNB's claims and the identified related issues should be heard and decided in one procedurally proper forum -- and the proper forum is clearly the Jefferson Circuit Court. Accordingly, I believe that VNB's petition for the writ of mandamus should be granted in its entirety.

SHAW, Justice (concurring in part, concurring in the result in part, and dissenting in part).

In this petition for a writ of mandamus, Valley National Bank ("VNB") challenges the Montgomery Circuit Court's denial of its motion to dismiss the four claims asserted in the underlying declaratory-judgment action pending in that court. The main opinion directs the trial court to dismiss two of the four claims; I believe that only one of the claims should be dismissed. Therefore, I concur in the result in part and respectfully dissent in part. The main opinion also grants VNB's motion to strike certain exhibits attached to the response to its petition. I concur with that portion of the opinion.

According to the complaint, William Blount previously owned an "interest" in Alabama Utility Services, LLC ("AUS"). WWJ Corporation, Inc. ("WWJ"), a corporation owned by Jesse Blount and Wilson Blount, William's sons, also had "an ownership interest" in AUS. From February 2013 to May 2013, WWJ acquired 100% "of the membership interests in AUS" from several individuals and entities, including William.

In its mandamus petition, VNB contends that in July 2015 it obtained a $905,599.90 judgment against William in another

action. VNB contends that, after this, William, who was the president of WWJ, "caused WWJ" to sell AUS. In August 2015, AUS was sold for $1,600,000.

On July 17, 2018, the Blounts filed the underlying declaratory-judgment action in the trial court. The complaint alleged:

> "[VNB] has threatened [the Blounts] with potential litigation concerning whether certain actions taken by William constitute[] a fraudulent conveyance by William to Jesse and Wilson, whether William was the alter ego of WWJ and AUS, whether certain assets owned by [the Blounts] should be placed in a constructive trust for [VNB], and whether [the Blounts] engaged in a civil conspiracy."

The Blounts thus sought a judgment

> "declaring that a) William's transfer of his interest in AUS to WWJ was not fraudulent as to [VNB], b) William was not the alter ego of AUS or WWJ, c) the sale of AUS did not result in a constructive trust in favor of [VNB], and d) [the Blounts] did not engage in a civil conspiracy."

VNB moved to dismiss the complaint under Rule 12(b)(1) and (b)(6), Ala. R. Civ. P., contending, among other things, that the complaint did not present a justiciable controversy and that it failed to state a claim upon which relief could be granted. The trial court denied the motion, and VNB petitions this Court for a writ of mandamus directing the trial court to

vacate that decision and to dismiss the underlying declaratory-judgment action.

This Court has stated that "declaratory-judgment actions are not intended to be a vehicle for potential tort defendants to obtain a declaration of nonliability." Ex parte Valloze, 142 So. 3d 504, 511 (Ala. 2013). Thus, generally, a complaint by a potential tort defendant seeking a declaratory judgment as to its nonliability will fail to state a viable claim. A trial court's denial of a motion to dismiss based on such a challenge, however, would not be reviewable by this Court by a petition for a writ of mandamus. Ex parte Nautilus Ins. Co., 260 So. 3d 823, 831 (Ala. 2018) ("[T]he denial of a motion to dismiss based upon Rule 12(b)(6) is not reviewable by petition for a writ of mandamus."). Therefore, we cannot issue the writ in the instant case simply because the Blounts' action might sound in tort or is otherwise prohibited by caselaw. Nevertheless, this Court will review by a mandamus petition the denial of a motion to dismiss that challenges the trial court's subject-matter jurisdiction, which would include the issue whether a justiciable controversy exists. Ex parte Bridges, 925 So. 2d 189, 191 (Ala. 2005). Thus, we must determine whether the trial court has jurisdiction in this

case, but not whether the complaint states a claim, has merit, or is otherwise prohibited.[5]

In its petition, VNB, citing Valloze, supra, argues that the Blounts cannot use a declaratory-judgment action to essentially obtain a declaration that they are not liable to VNB on the claims alleged in the Blounts' complaint. In Valloze, two motor homes manufactured by Tiffin Motor Homes, Inc. ("Tiffin"), caught fire. The insurers of those motor homes gave Tiffin notice of potential claims against it. Tiffin then filed a declaratory-judgment action against, among others, manufacturers of parts for the motor homes and the insurers of the motor homes; Tiffin sought a judgment declaring the cause and origins of the fires, who was at fault and liable for the fires, and the amount of damages. Valloze, 142 So. 3d at 506. The defendants filed motions to dismiss alleging that, because no underlying lawsuits had been filed against Tiffin seeking recovery for the losses sustained in the fires, no justiciable controversy existed and the trial court lacked jurisdiction. The trial court denied the motions

[5]I express no opinion as to whether VNB's Rule 12(b)(6) motion was correctly denied.

to dismiss, and the defendants petitioned this Court for mandamus review.

This Court noted that there must exist a bona fide justiciable controversy for a declaratory-judgment action to decide. Valloze, 142 So. 3d at 508. Citing Harper v. Brown, Stagner, Richardson, Inc., 873 So. 2d 220 (Ala. 2003), this Court further stated that a controversy is justiciable when present legal rights are thwarted or affected. I note that Harper also states that the controversy must be definite and concrete, must touch the legal relations of the parties in adverse legal interest, and must be susceptible to relief by a judgment. 873 So. 2d at 224. Although "'declaratory-judgment actions are designed to be preemptive,' ... this is because they seek to '"set controversies to rest before they lead to repudiation of obligations, invasion of rights, and the commission of wrongs."'" Valloze, 142 So. 3d at 509–10 (quoting Carey v. Howard, 950 So. 2d 1131, 1134 (Ala. 2006), quoting in turn Harper, 873 So. 2d at 224).

In Valloze, the Court held that Tiffin did not show how any of its obligations would be impaired or any of its rights invaded if it could not obtain declaratory relief. No "actual controversy" existed between Tiffin and the defendants because

the defendants had not yet "elected to pursue a claim." 142 So. 3d at 510. Further, the apprehension of a lawsuit was not a sufficient controversy: "Simply relieving a party of the apprehension of legal action and potential liability is not the purpose of a declaratory-judgment action." 142 So. 3d at 510. A determination in that case would not have prevented Tiffin from repudiating some obligation on its part or from incurring some further liability, nor would it have prevented some harm to, or invasion of, Tiffin's rights. 142 So. 3d at 510.

In the instant case, the complaint alleged that the Blounts were being threatened with potential litigation; it sought a declaration of whether William's transfer of his interest in AUS to WWJ was a fraudulent conveyance, whether WWJ or AUS was an alter ego of William, whether certain assets owned by the Blounts should be placed in a constructive trust, and whether the Blounts had engaged in a civil conspiracy. Under Valloze, the mere threat of potential litigation against the Blounts does not alone constitute an actual controversy; the Blounts are not entitled to relief from the apprehension of a lawsuit by VNB and potential tort liability. Thus, as described in Valloze and Harper, to establish a viable

controversy, the Blounts' present legal rights must be thwarted or affected; the controversy must be definite and concrete, touch adverse legal relations of the parties, and be susceptible to relief by a judgment; and a declaratory judgment will set the controversy to rest before it leads to the repudiation of obligations, invasion of rights, or the commission of wrongs.

Here, whether William's conveyance of his interest in AUS to WWJ was fraudulent, whether he abused the corporate form, and whether assets should be placed in a constructive trust appear to constitute a justiciable controversy that is impacting the Blounts' legal rights (or at least the rights of Jesse and Wilson, as owners of WWJ). Specifically, there is an issue as to whether William's interest in AUS was properly transferred to WWJ before WWJ sold that interest, thus calling into question whether WWJ owned what was sold and now owns that portion of the proceeds obtained from the sale. The legal right to those proceeds is disputed; the proceeds cannot (or should not) be used or spent before any liability or ownership touching those proceeds is resolved, lest the assets sold and the proceeds gained are later deemed to be the result of a fraudulent conveyance and placed in a constructive trust.

This is not the same as a determination of "no liability" for a wrong that has occurred, as was the case in Valloze; a determination by the trial court in this action would not simply be a declaration on potential liability. Instead, a judgment in this action will settle a controversy related to the proper ownership of an identifiable portion of the proceeds that resulted from the sale of AUS. To me, this meets the definition of a justiciable controversy set forth in Valloze, and I believe that the trial court has jurisdiction over those claims. Thus, I do not believe that we should issue a writ of mandamus directing the trial court to dismiss them.

That said, the claim alleging civil conspiracy appears to seek a declaration of "nonliability" as to a potential claim and resulting damages; this is outside the "actual controversy" relating to the ownership of the proceeds of the AUS sale. Although it does relate to the overall controversy regarding the Blounts' actions, because of the particular nature of a civil-conspiracy claim, it does not relate to the ownership interests that constitute the justiciable controversy. Therefore, I believe that the petition should be

granted and the trial court directed to dismiss the civil-conspiracy claim.

For the reasons stated above, I concur in the result to deny the petition on the alter-ego and constructive-trust claims and to grant the petition on the civil-conspiracy claim; I respectfully dissent to granting the petition on the fraudulent-transfer claim.

Mendheim, J., concurs.

BRYAN, Justice (concurring in part, concurring in the result in part, and dissenting in part).

I concur in the portion of the main opinion granting the motion filed by Valley National Bank ("VNB") to strike certain exhibits that were attached to the answer filed by Jesse Blount, Wilson Blount, and William Blount. I concur in the result regarding the portion of the main opinion granting VNB's petition for a writ of mandamus insofar as it seeks an order directing the Montgomery Circuit Court ("the circuit court") to dismiss the portion of the complaint filed by the Blounts seeking a judgment declaring that William did not commit a fraudulent transfer of certain assets and that the Blounts did not engage in a civil conspiracy.

As the main opinion notes, a declaratory-judgment action should not be used simply to obtain a determination of nonliability.

> "It is true that 'declaratory-judgment actions are designed to be preemptive,' but this is because they seek to '"set controversies to rest before they lead to repudiation of obligations, invasion of rights, and the commission of wrongs."' Carey v. Howard, 950 So. 2d 1131, 1134 (Ala. 2006)(quoting Harper [v. Brown, Stagner, Richardson, Inc.], 873 So. 2d [220,] 224 [(Ala. 2013)]. [The Blounts] ha[ve] not highlighted how any of [their] obligations will be impaired or any of [their] rights invaded if [they] cannot obtain declaratory

> relief. Simply relieving a party of the apprehension of legal action and potential liability is not the purpose of a declaratory-judgment action."

Ex parte Valloze, 142 So. 3d 504, 509-10 (Ala. 2013).

However, as to the portion of the main opinion denying VNB's petition insofar as it requests an order directing the circuit court to dismiss the portion of the Blounts' complaint seeking a judgment declaring that certain corporations were not the alter ego of William and that a constructive trust should not be imposed in favor of VNB, I dissent.

In Ex parte Thorn, 788 So. 2d 140 (Ala. 2000), this Court considered, among other things, whether an allegation that a corporation was the alter ego of individual defendants and a request that the corporate veil be pierced should be severed from an action involving the plaintiff's other requests for relief. In denying the portion of the plaintiff's mandamus petition requesting the severance, this Court noted that, although the piercing-the-corporate-veil doctrine is an equitable doctrine,

> "that doctrine is not a claim; '[i]t merely furnishes a means for a complainant to reach a second corporation or individual upon a cause of action that otherwise would have existed only against the first corporation.' 1 William Meade

> Fletcher, Fletcher Cyclopedia of the Law of Private Corporations § 41.10 (perm. ed. rev. vol. 1999)."

788 So. 2d at 145. Similarly, in Radenhausen v. Doss, 819 So. 2d 616, 620 (Ala. 2001), this Court stated: "[A] constructive trust is an equitable remedy; and a request to impose such a trust is not a cause of action that will stand independent of some wrongdoing."

In this case, the Blounts have requested a judgment declaring that William did not commit a fraudulent transfer of certain assets, that the Blounts did not engage in a civil conspiracy, that certain corporations were not William's alter ego, and that a constructive trust should not be imposed in favor of VNB. The latter two requests for relief clearly seek preemptive determinations that VNB cannot pursue those equitable remedies against the Blounts. However, those remedies are not causes of action or claims that would exist independent of some wrongdoing. Because this Court is granting the portion of VNB's petition seeking a dismissal of the fraud and civil-conspiracy issues, the circuit court will not reach a determination regarding whether the Blounts committed any wrongdoing in this action. Therefore, I would likewise grant the portion of the petition seeking an order

directing the circuit court to dismiss the alter-ego and constructive-trust issues.