IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

SPECIALTY COMPANIES GROUP LLC, et al., *Plaintiffs/Appellants*,

v.

MERITAGE HOMES OF ARIZONA INC, *Defendant/Appellee*.

No. 1 CA-CV 18-0708
FILED 2-25-2020

Appeal from the Superior Court in Maricopa County
No. CV2015-090161
The Honorable David M. Talamante, Judge (retired)

REVERSED AND REMANDED

COUNSEL

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OPINION

Judge Paul J. McMurdie delivered the opinion of the Court, in which Presiding Judge Maria Elena Cruz and Vice Chief Judge Kent E. Cattani joined.

M c M U R D I E, Judge:

¶1 Specialty Companies Group, LLC ("Specialty") challenges the superior court's summary judgment ruling that its attempt to impose alter-ego liability on Meritage Homes of Arizona, Inc. ("Meritage") for a default judgment entered against Maricopa Lakes, LLC ("Lakes") was time-barred. We conclude Specialty's claim is timely under the limitation period for actions on a judgment and reverse and remand for further proceedings.

FACTS AND PROCEDURAL BACKGROUND

¶2 Meritage and Hacienda Builders, LLC ("Hacienda"), formed Lakes in 2004 to develop a residential project in Maricopa. Lakes hired G&K South Forty Development, Inc. ("G&K") to serve as the project manager. G&K subcontracted with Specialty in August 2007 to provide grouted riprap for the project.

¶3 In late 2007, Hacienda announced it would no longer meet its financial obligations to Lakes. Specialty's invoices to G&K, totaling more than $150,000, went unpaid. Specialty sued G&K on April 13, 2009, alleging breach of contract, claims for amounts owed on an open account, breach of the covenant of good faith and fair dealing, and unjust enrichment. G&K filed a third-party complaint alleging the same claims against Lakes and obtained a default judgment on November 28, 2011 (the "Lakes Judgment"). Shortly after entry of the Lakes Judgment, Specialty and G&K reached a settlement under which G&K assigned its claims against Lakes to Specialty.

¶4 On January 22, 2015, Specialty sued Meritage and Hacienda. Specialty alleged that Meritage and Hacienda were both liable for the Lakes Judgment because, among other things, Lakes was their alter ego. After significant motion practice, including Specialty filing amended complaints, the court granted summary judgment to Meritage, finding Specialty's action and alter-ego claims were time-barred under the six-year limitation period for claims evidenced by or founded on a written contract. Ariz. Rev. Stat. ("A.R.S.") § 12-548(A)(1). The court also awarded Meritage its attorney's fees and costs.

¶5 Specialty voluntarily dismissed its claims against Hacienda and appealed the judgment in favor of Meritage. We have jurisdiction under A.R.S. § 12-2101(A)(1).

DISCUSSION

¶6 Specialty argues the six-year statute of limitations for contract actions, A.R.S. § 12-548(A)(1), does not bar its suit against Meritage because its claim to pierce the corporate veil under an alter-ego theory was an "action on a judgment" and not a breach-of-contract action. Specialty contends that the five-year statute of limitations contained within A.R.S. § 12-1551[1] controls an action on a judgment, and argues this limitation period began to accrue on the date the Lakes Judgment was entered. In response, Meritage argues Specialty's alter-ego claim accrued when Specialty, either as the assignee of G&K's claims or individually, suspected that it could bring that claim against Meritage. Meritage also claims that Specialty's action cannot be an action on a judgment because, in its view, such an action can be brought only against the judgment debtor named in the judgment. Therefore, Meritage argues that because Specialty's suit is not an action on the Lakes Judgment, it must be controlled either by A.R.S. § 12-548(A)(1)'s limitation period or the four-year catch-all statute of limitations, A.R.S. § 12-550, and that under either period, Specialty's action is untimely.

¶7 We review *de novo* whether summary judgment is warranted, including whether genuine issues of material fact exist and whether the superior court correctly applied the law. *Dreamland Villa Cmty. Club, Inc. v. Raimey*, 224 Ariz. 42, 46, ¶ 16 (App. 2010). We view the evidence in the light most favorable to Specialty, the nonmoving party. *Normandin v. Encanto Adventures, LLC*, 246 Ariz. 458, 460, ¶ 9 (2019). Summary judgment should be granted only "if the facts produced in support of [a] claim . . . have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim." *Orme Sch. v. Reeves*, 166 Ariz. 301, 309 (1990).

¶8 We review the application of a statute of limitations *de novo*. *Broadband Dynamics, LLC v. SatCom Marketing, Inc.*, 244 Ariz. 282, 285, ¶ 5 (App. 2018). "Given our preference to resolve claims on their merits," we do not favor statute of limitations defenses, *Coulter v. Grant Thornton, LLP*,

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[1] The Legislature amended A.R.S. §§ 12-1551 and -1611 in 2018 and 2019, extending the limitation period to ten years for (1) judgments entered on or after August 3, 2013, and (2) judgments entered on or before August 2, 2013 that were renewed on or before August 2, 2018. 2018 Ariz. Sess. Laws, ch. 36, § 1 (2d Reg. Sess.); 2019 Ariz. Sess. Laws, ch. 20, § 1 (1st Reg. Sess.). These amendments are not pertinent to this appeal.

241 Ariz. 440, 444, ¶ 7 (App. 2017), and look to the nature of the cause of action and not its form, *Broadband*, 244 Ariz. at 285, ¶ 5. If two constructions are possible, we generally prefer to apply the longer limitation period. *Id.*

A. An Alter-Ego Assertion is not a Separate Cause of Action and is Governed by the Limitation Period Applicable to the Cause of Action to Which the Claim to Pierce the Corporate Veil is Tied.

¶9 We turn first to the parties' arguments concerning the nature of the alter-ego claim at issue in this case. Under Arizona law, the corporate veil can be pierced, and a parent company held liable for the acts of its subsidiary, where the subsidiary "is merely the parent corporation's alter ego and when observing the corporate form would work an injustice." *Keg Rests. Ariz., Inc. v. Jones*, 240 Ariz. 64, 73, ¶ 31 (App. 2016). This doctrine, also known as an "alter-ego theory," is governed by a two-part test. First, the party seeking to pierce the corporate veil in this context must show a unity of control, which can be established by showing the parent corporation exercised "substantially total control over the management and activities of" the subsidiary. *Taeger v. Catholic Family and Cmty. Servs.*, 196 Ariz. 285, 297–98, ¶ 45 (App. 1999) (quoting *Gatecliff v. Great Republic Life Ins. Co.*, 170 Ariz. 34, 37 (1991)). Second, it must be shown under the circumstances of each case that "observance of the corporate form would sanction a fraud or promote injustice." *Gatecliff*, 170 Ariz. at 37. If the corporate veil is pierced and liability is imposed, the parent corporation is "held liable for the results" of its subsidiary's actions. *Jabczenski v. S. Pac. Mem'l Hosps.*, 119 Ariz. 15, 21 (App. 1978).

¶10 Although we have not found any Arizona authority explicitly holding so, the principles discussed above illustrate that an alter-ego claim is not a separate cause of action, but "a means of imposing liability on an underlying cause of action such as a tort or breach of contract." 1 Fletcher Cyc. Corp. § 41.10, Westlaw (database updated Sept. 2019) (footnote omitted); *see also* 18 C.J.S. *Corporations* § 38, Westlaw (database updated Dec. 2019) ("Piercing the corporate veil generally is not itself an action, but is merely a procedural means of allowing liability on a substantive claim . . . ."). Both elements of an alter-ego claim serve no purpose unless accompanied by an allegation that some actionable wrong has occurred. *See* 18 C.J.S. *Corporations* § 38, Westlaw (database updated Dec. 2019) ("[W]ithout an underlying cause of action creating corporate liability, evidence of an abuse of the corporate form is immaterial.").

¶11 Piercing the corporate veil is necessarily a fact-intensive endeavor. To justify piercing the corporate veil under an alter-ego theory,

it is not enough to merely show, in the abstract, that a parent corporation is the alter ego of a subsidiary; there must be some actionable wrong to hold the parent corporation liable. Nor is it enough to prove that a subsidiary is the alter ego of a parent corporation and that the subsidiary is responsible for some conduct; the party bringing the alter-ego claim must show that failing to pierce the corporate veil and hold the parent liable will perpetuate a fraud or an injustice. In other words, the ultimate question of whether the corporate veil should be pierced under an alter-ego theory is inextricably intertwined with the circumstances surrounding the action in which the alter-ego claim is raised. Our conclusion is bolstered by the fact that this appears to have long been the basis of claims to pierce the corporate veil in Arizona, *see, e.g.*, *Gatecliff*, 170 Ariz. at 36 (alter-ego claim raised in insurance-bad-faith and breach-of-contract action); *Emp'r's Liab. Assur. Corp. v. Lunt*, 82 Ariz. 320, 323 (1957) (claim raised in breach-of-contract action); *Keg Rests.*, 240 Ariz. at 67, ¶ 2 (same), and is the accepted view in the majority of states that have expressly addressed the nature of such claims, 1 Ribstein & Keatinge on Ltd. Liab. Cos. § 10:8, n.6, Westlaw (database updated Dec. 2019) (collecting cases from several states).

¶12 Thus, a claim seeking to impose alter-ego liability on a party by piercing the corporate veil is not a stand-alone cause of action. And because an alter-ego claim is not a cause of action, it naturally follows that an alter-ego claim is not governed by a particular statute of limitations or an independent rule of accrual. Instead, a party seeking to pierce the corporate veil under an alter-ego theory is bound by the limitation period applicable to the cause of action to which the alter-ego claim is tied. *See, e.g.*, *Wm. Passalacqua Builders, Inc. v. Resnick Developers S., Inc.*, 608 F. Supp. 1261, 1264, n.1 (S.D.N.Y. 1985) ("The cause of action accrues at the same time for the corporation and the *alter egos* for all types of actions."), *aff'd in part, rev'd and remanded in part*, 933 F.2d 131 (2d Cir. 1991); *Turney Murphey Co. v. Specialty Constructors, Inc.*, 659 So.2d 1242, 1245–46 (Fla. Dist. Ct. App. 1995) (statute of limitations for piercing the corporate veil is governed by the nature of the action in which a claim is raised); *Peetoom v. Swanson*, 778 N.E.2d 291, 295 (Ill. App. Ct. 2002) ("Because a complaint seeking to pierce the corporate veil is not itself a cause of action, the limitations period applicable to such a complaint is governed by the nature of the underlying cause of action alleged in the complaint."); *Belleville v. Hanby*, 394 N.W.2d 412, 414–15 (Mich. Ct. App. 1986) (assessing nature of the cause of action raised in the complaint to determine applicable limitation period for a piercing claim). To determine which statute of limitations applies to Specialty's action here, therefore, we must examine the nature of the cause of action raised in Specialty's amended complaint.

B. Because Specialty's Alter-Ego Claim Was Raised in an Action on a Judgment A.R.S. § 12-1551's Limitation Period Applies.

¶13 As noted above, Specialty characterizes its suit as an action on a judgment in its amended complaint and argues that the statute of limitations for an action on a judgment should apply. We agree.

¶14 As written at the time this case was initiated, A.R.S. § 12-1551 allowed judgment creditors to execute on a judgment within five years of either entry of the judgment or renewal "by affidavit or by *an action* brought on it." A.R.S. § 12-1551(A) (2015) (emphasis added). Likewise, A.R.S. § 12-1611 provided that "[a] judgment may be renewed *by action thereon*" at any time within five years after the date of the judgment. (Emphasis added.)

¶15 In *Fidelity National Financial Inc. v. Friedman*, our supreme court held that the "action" described by A.R.S. §§ 12-1551 and -1611 is a specific form of suit known as an action upon a judgment. 225 Ariz. 307, 309–10, ¶¶ 11–13 (2010). "[E]very judgment continues to give rise to an 'action to enforce it, called an action upon a judgment,'" *Id.* at ¶ 13 (quoting *Associated Aviation Underwriters v. Wood*, 209 Ariz. 137, 180, ¶ 150 (App. 2004)), which has deep roots in the common law and Arizona's early statutes, *id.* at 308–09, ¶¶ 6–10. "[T]he defendant in an action on the judgment under our statutory scheme is generally the judgment debtor, and the amount sought is the outstanding liability on the original judgment." *Id.* at 310, ¶ 14 (citations omitted). The primary purpose of an action upon a judgment is to "obtain a new judgment which will facilitate the ultimate goal of securing the satisfaction of the original cause of action." *Id.* at ¶ 13 (quoting *Wood*, 209 Ariz. at 180, ¶ 150). Thus, A.R.S. §§ 12-1551 and -1611 establish a five-year (now ten-year) limitation period for both execution actions—such as, for example, obtaining a writ of garnishment for money or property, A.R.S. §§ 12-1570 to -1597—and for filing an action upon a judgment. *Friedman*, 225 Ariz. at 311, ¶ 22 ("[T]he judgment debtor will be released from further obligation unless a judgment creditor timely files a renewal affidavit or brings an action on the judgment within five years after its entry.").

¶16 Here, the nature of Specialty's suit was that of an action on the Lakes Judgment. The amended complaint: (1) specifically alleged that it was an action on the Lakes Judgment; (2) outlined the facts and procedural history surrounding the entry of the Lakes Judgment and G&K's assignment of that judgment to Specialty; and (3) sought a new judgment against Meritage for the outstanding balance of the Lakes Judgment, plus interest and costs. The question is whether the alter-ego claim so changed

the nature of Specialty's action that it can no longer be considered an action on a judgment, and a different limitation period should apply.

¶17 On this point, we find persuasive the numerous federal and state courts that have held that a claim to pierce the corporate veil may be raised in an action founded upon a judgment and that such an action is governed by the limitation period for actions on or to enforce a judgment. In *Wm. Passalacqua Builders, Inc. v. Resnick Developers South, Inc.*, the Southern District of New York determined that a claim to pierce the corporate veil and hold alleged alter egos of a corporation liable for a judgment was subject to New York's 20-year limitation period for "actions to enforce a judgment." 608 F. Supp. at 1264–65. The court reasoned as follows:

> Under the *alter ego* and instrumentality theories the corporation and those who have controlled the corporation are treated as but one entity. Thus, the statute of limitations applicable to the corporation should apply to those who are using the corporation as an instrumentality. The action accrued against both the corporation and any *alter egos* when the judgment was entered. The action to enforce the money judgment is therefore timely.

Id. at 1264 (footnote omitted) (citation omitted).

¶18 Other courts have adopted or mirrored the *Passalacqua* court's reasoning. The New Hampshire Supreme Court cited *Passalacqua* in concluding that a judgment creditor's action to pierce the corporate veil of a corporate judgment debtor was timely under a 20-year limitation period for actions of debt on judgments. *Norwood Group, Inc. v. Phillips*, 828 A.2d 300, 303 (N.H. 2003) (citing N.H. Rev. Stat. Ann. § 508:5 (2003)). In so holding, the court found persuasive *Passalacqua*'s and other jurisdictions' rule that an action to hold an alleged alter ego liable for a judgment obtained against a corporation was "an action on a judgment." *Norwood*, 828 A.2d at 302–03.

¶19 The other jurisdictions cited by the *Norwood* court included a Michigan Court of Appeals' decision in *Belleville v. Hanby*, 394 N.W.2d at 414. *Belleville* applied *Passalacqua* and concluded Michigan's ten-year limitation period for "actions founded upon judgments" applied to a suit seeking to hold shareholders liable for a judgment obtained against a corporation because the plaintiffs only sought "to establish that the judgment obtained against the corporation was also a judgment against the

[shareholders] in their individual capacities." *Id.* at 414–15. The Michigan Court of Appeals reaffirmed *Belleville* and specifically held that a judgment creditor was entitled to bring an action on a judgment to enforce that judgment against an alleged alter ego of the judgment debtor. *Gallagher v. Persha*, 891 N.W.2d 505, 513 (Mich. Ct. App. 2016).

¶20 Likewise, in *Turner Murphy Co. v. Specialty Constructors, Inc.*, the Florida Court of Appeals cited *Passalacqua* in holding that Florida's five-year limitation period for an action on a judgment applied to the plaintiff's claim seeking to impose alter-ego liability on a corporation that owned the judgment debtor. 659 So.2d at 1244–46 (quoting Fla. Stat. § 95.11(2)(a) (1987)). And in *Oceanics Schs., Inc. v. Barbour*, 112 S.W.3d 135, 145–46 (Tenn. Ct. App. 2003), the Tennessee Court of Appeals held that a suit seeking to enforce a domesticated foreign judgment against an alleged alter ego was an action on a judgment governed by Tennessee's ten-year limitation period for such actions.

¶21 These cases provide strong support not only for the principle that it is appropriate to raise an alter-ego claim in an action on a judgment, but also that such actions are governed by the limitation period applied to an action on a judgment. These principles also align with our view that claims to pierce the corporate veil are not stand-alone actions but are a means of imposing liability for some actionable wrong upon an individual or entity abusing the advantages of the corporate form.

¶22 Citing *Fidelity National Financial, Inc. v. Friedman*, Meritage contends that the "purpose of an action on a judgment is extremely narrow," and that "[t]he sole issue to be decided in such an action is whether the original judgment is still enforceable." But Meritage's reliance on *Friedman* is misplaced. In *Friedman*, the Arizona Supreme Court answered two questions certified from the Ninth Circuit Court of Appeals: (1) whether actions to collect on a judgment—there, a garnishment action—could serve to renew an Arizona judgment; and (2) whether filing a related lawsuit in another state—there, a racketeering suit—could renew an Arizona judgment. 225 Ariz. at 311–12, ¶¶ 24–26. In answering both questions in the negative, the supreme court defined an action on a judgment only to the extent necessary to say what it was not—a garnishment action or racketeering suit. *See id.* at 310, 312, ¶¶ 12–15, 25–26. The court was focused on the role of an action on a judgment as a statutorily recognized means of renewing a judgment, *see id.* at 310–12, ¶¶ 15, 19, 24, and was careful to speak in generalities when discussing the nature of the action outside of that context, *see id.* at 310, ¶ 14 ("[T]he defendant in an action on the judgment . . . is *generally* the judgment debtor, and the amount

sought is the outstanding liability on the original judgment." (emphasis added) (citations omitted)). The court did not, as Meritage claims, conclusively establish the boundaries of an action on a judgment in Arizona.

¶23 Moreover, the court in *Friedman* favorably cited this court's description of actions on judgments in *Associated Aviation Underwriters v. Wood*, wherein we acknowledged—albeit in dicta—that "some courts have held that an action against a corporation's . . . alter ego is an action on a judgment." *Friedman*, 225 Ariz. at 310–11, ¶¶ 13, 24 (citing *Wood*, 209 Ariz. at 180, ¶ 150). Thus, *Friedman* is not controlling authority on the issue before us and does not prevent us from adopting the majority view that: (1) an alter-ego claim may be raised in an action on a judgment; and (2) an action on a judgment based on an alter-ego claim will be governed by the statute of limitations period for actions on judgments.

¶24 Meritage also cites *Peterson v. Superior Bank FSB*, 611 N.E.2d 1139 (Ill. Ct. App. 1993) as contrary out-of-state authority. In *Peterson*, the Illinois Court of Appeals declined to apply Illinois' limitation period for actions on a judgment to a claim to pierce the corporate veil brought in an action to enforce a judgment against other members of a joint venture. *Id.* at 1143. However, *Peterson* is distinguishable because the claim there was not brought against an entity alleged to be the alter ego of the *judgment debtor*, but against the alleged alter ego of an entity the plaintiff claimed was *vicariously liable* for the conduct underlying the judgment. *Id.* at 1141. The *Peterson* court held that the plaintiff could not raise the vicarious-liability claim against the other members of the joint venture and never reached the alter-ego claim.

¶25 Later Illinois caselaw has established that a claim to pierce the corporate veil carries the limitation period "of the underlying cause of action alleged in the complaint." *Peetoom*, 778 N.E.2d at 295. This includes actions on a judgment, which the Illinois Court of Appeals has recognized explicitly as an appropriate proceeding to raise an alter-ego claim. *Miner v. Fashion Enters., Inc.*, 794 N.E.2d 902, 909 (Ill. Ct. App. 2003) (recognizing "a judgment creditor may choose to file a new action to pierce the corporate veil" because a judgment creates a new and distinct obligation).

¶26 Finally, Meritage contends treating Specialty's claim as an action on a judgment is against public policy because it would allow judgment creditors to pursue an alter-ego claim at any time so long as the underlying judgment is timely renewed. But if Specialty can successfully prove its alter-ego claim—an issue not before us today—the law would

treat Meritage as if it were Lakes to enforce the Lakes Judgment. *See Sun Valley Ranch 308 Ltd. P'ship ex rel. Englewood Props., Inc. v. Robson*, 231 Ariz. 287, 296, ¶ 36 (App. 2012) ("Accepting plaintiffs' alter ego claims as true, Robson *is* each of these entities . . . ."). We thus agree with the *Passalacqua* court, which stated that enforcing an existing judgment against an alter ego is no different from enforcing the judgment against a named judgment debtor. *Passalacqua*, 608 F. Supp. at 1264. This is not to say an alter-ego claim can be asserted in an action on a judgment indefinitely and without consequence. Laches could bar claims brought after an unreasonable delay. *See Sotomayor v. Burns*, 199 Ariz. 81, 83, ¶ 6 (2000) ("Laches will generally bar a claim when the delay is unreasonable and results in prejudice to the opposing party.").

¶27 Because Specialty's action—including the alter-ego claim interwoven within it—was an action on a judgment, it is subject to the then-five-year limitation period for an action on a judgment. A.R.S. § 12-1551(A); A.R.S. § 12-1611. Because one cannot bring an action on a judgment without an underlying judgment, we also conclude Specialty's claim accrued when the court entered the Lakes Judgment—on or about November 28, 2011. *See, e.g.*, *Gust, Rosenfeld & Henderson v. Prudential Ins. Co. of Am.*, 182 Ariz. 586, 588 (1995) ("As a general matter, a cause of action accrues, and the statute of limitations commences, when one party is able to sue another."). Because G&K could bring an action from the date of that judgment, and Specialty steps into the shoes of G&K, Specialty's original complaint, filed on January 22, 2015, was timely.

C. We Do Not Review the Superior Court's Finding that Material Fact Questions Precluded Summary Judgment on the Merits.

¶28 Meritage also contends we can affirm the court's summary judgment ruling because Specialty failed to prove its alter-ego allegations. Because we review a summary judgment claim *de novo*, we may affirm a grant of summary judgment if it is correct for any reason. *Am. Family Mut. Ins. Co. v. Cont'l Cas. Co.*, 200 Ariz. 119, 121, ¶ 9 (App. 2001). But Meritage unsuccessfully moved for summary judgment twice on the merits of Specialty's allegations and mostly repeats its arguments from those motions on appeal.

¶29 Orders denying summary judgment typically are not appealable even after entry of a final judgment. *Ryan v. San Francisco Peaks Trucking Co., Inc.*, 228 Ariz. 42, 48, ¶ 20 (App. 2011). We may review the order if the superior court denied the motion on purely legal grounds. *Id.* A purely legal issue is "one that does not require the determination of any

predicate facts, namely, the facts are not merely undisputed but immaterial." *Id*. (quotation omitted).

¶30 The superior court twice concluded that material issues of fact prevented summary judgment on Specialty's alter-ego allegations. We will not disturb these rulings.

CONCLUSION

¶31 We reverse the entry of summary judgment and remand for further proceedings. We vacate the superior court's attorney's fees and costs awards to Meritage. Specialty may recover its taxable costs incurred in this appeal upon compliance with Arizona Rule of Civil Appellate Procedure 21.

AMY M. WOOD • Clerk of the Court
FILED: AA