ARKANSAS COURT OF APPEALS

DIVISION III
No. CA08-467

LINDA V. RUSH-BRADLEY APPELLANT V. MARY ANN VAN ORE and STEVAN VAN ORE APPELLEES	**Opinion Delivered** February 4, 2009 APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT, [NO. CIV 2007-304-3] HONORABLE STACEY A. ZIMMERMAN, JUDGE AFFIRMED

JOSEPHINE LINKER HART, Judge

Linda V. Rush-Bradley appeals from a judgment in a Washington County bench trial that found that she had breached a consignment contract and had converted furniture and household items belonging to the appellees Mary Ann and Stevan Van Ore. The judgment awarded the Van Ores $13,669 as damages. On appeal, Rush-Bradley argues that there was insufficient evidence to support the trial court' s decision. We affirm.

Most of the legally significant facts in this case are not in dispute. Perfect Partners is a domestic corporation formed in 1995. Rush-Bradley and Jerry E. Bradley were the only stockholders, owning forty-five and fifty-five percent of the stock, respectively. The sole purpose of the corporation was to operate a consignment shop dealing in clothing and home furnishings. Although Perfect Partners was incorporated, the business' s outside neon and monument signs and contract letterhead did not include the designation " Incorporated"

with the trade name. The only outward indication that Perfect Partners was a corporation was found on the store' s business permit. Rush-Bradley also admitted that she had been lax in not recording the minutes of the annual shareholder meetings, although she claimed that they did hold these meetings. At the time this case was tried, Perfect Partners was insolvent.

In July 2005, Mary Ann Van Ore contacted Perfect Partners for the purpose of consigning several pieces of home furnishings for sale. Rush-Bradley set up an appointment and went to the Van Ore home and gave her opinion of the value of the prospective merchandise. An inventory of the items, dated July 1, 2005, stated that the total value was $13,669. Rush-Bradley also recommended a moving company to transport the items to the Perfect Partners store. On July 20, 2005, after the consignment items were delivered to Perfect Partners and placed on display, Mary Ann Van Ore went to the store and signed a consignment contract. The contract was acknowledged by Kim Freyaldenhoven, an employee of Perfect Partners, not Rush-Bradley.

The terms of the contract required the Van Ores to consign their merchandise to Perfect Partners for a period of sixty days. The commission for selling the items was set at fifty percent for items sold for less than $600 and forty percent for items that sold for more. Items that failed to sell after thirty days would be discounted by up to twenty-five percent. If the Van Ores withdrew any item before the expiration of the contract, they agreed to pay to Perfect Partners fifty percent of the asking price. At the expiration of the

sixty-day consignment period, the Van Ores were required to either re-consign the items or remove them from the store. Items left on the premises after the grace period would be deemed to be forfeited to Perfect Partners.

At the end of August 2005, the State of Arkansas Department of Finance and Administration closed the Perfect Partners store because it had failed to remit sales tax. A representative from the State, Stephanie Felteman, oversaw the dispersal of the store' s inventory. It is disputed whether Perfect Partners notified the Van Ores about the store closing. Rush-Bradley claimed to have called the Van Ores, but was unable to speak to either Stevan or Mary Ann directly or leave a message on their answering machine. Mary Ann claimed that it was not likely that Rush-Bradley attempted to call because she was at home during that time, caring for her ill spouse. Rush-Bradley also claimed that she sent a notice by mail, but the Van Ores denied receiving it. Within a week, Rush-Bradley donated the Van Ores' property to charity. Although Rush-Bradley claimed that some of the consignments were sold, she conceded that she never forwarded a check to them. According to Rush-Bradley, the only item that she removed from the store was her personal computer.

The Van Ores were granted judgment for $13,669, the full amount of the market value of their consignment items. In support of the judgment, the trial judge made approximately fifteen pages of written findings. In pertinent part, the trial court found that when the Perfect Partners store closed, prior to the expiration of the sixty-day consignment

period, Rush-Bradley " did not take sufficient and reasonable steps to notify the Van Ores of the store closure, did not take adequate and reasonable steps to return the remaining Van Ore property to the Van Ores, and did not return the property to the Van Ores, but instead, gave the property away to charity and failed to properly account for each item 'given away.' " The trial judge found that these actions constituted the tort of conversion as well as breach of contract. Further, the trial judge attributed these actions " specifically" to Rush-Bradley.

The trial court also found Mary Ann Van Ore' s testimony more credible than Rush-Bradley' s on the question of whether the Van Ores were notified of the store closing. Further, Rush-Bradley had failed to adequately apprise the Van Ores of the fact that Perfect Partners was a corporation rather than Rush-Bradley' s sole proprietorship. Under the facts, the trial court concluded that it was appropriate to pierce the corporate veil and hold Rush-Bradley personally responsible. Finally, the trial court noted that while the case sounded both in tort and contract, it was " primarily one of conversion." Rush-Bradley appeals from this judgment.

We note first that in bench trials, the standard of review on appeal is whether the trial court' s findings were clearly erroneous or clearly against the preponderance of the evidence. *Anderson v. Stewart*, 366 Ark. 203, 234 S.W.3d 295 (2006). We give due deference to the superior position of the trial judge to determine the credibility of the witnesses and the weight to be accorded their testimony. *Id.* It is within the province of

the trier of fact to resolve conflicting testimony. *Id.*

For her first point, Rush-Bradley argues that the trial court erred in failing to grant her directed-verdict motion because the Van Ores had not introduced sufficient evidence to support all of the elements of conversion. Specifically, she contends that there is no evidence to "suggest" that she exercised dominion and control over the Van Ores' property. Rush-Bradley notes that the Van Ores paid Razorback Moving Company to deliver the property to Perfect Partners and that Mary Ann Van Ore signed a contract with Perfect Partners when Rush-Bradley was not present. Further, she offered proof that Perfect Partners was formed in 1995 and continued to exist at the time of trial. She also asserts that the trial court improperly relied on federal law to impute the consignment contract to her. Finally, Rush-Bradley argues that the trial court improperly calculated the measure of damages because the most she could have received pursuant to the consignment contract was $6,849.50. We find these arguments unpersuasive.

The essence of Rush-Bradley's argument is that the trial court erred in piercing the corporate veil. Our supreme court has stated that it is a nearly universal rule that a corporation and its stockholders are separate and distinct entities, and the court will only disregard the corporate facade when the corporate form has been illegally abused to the injury of a third party. *Quinn-Matchet Partners, Inc. v. Parker Corp.*, 85 Ark. App. 143, 147 S.W.3d 703 (2004). The conditions under which the corporate entity may be disregarded or looked upon as the alter ego of the principal stockholder vary according to

the circumstances of each case. *Id.* The doctrine of piercing the corporate veil is applied when the facts warrant its application to prevent an injustice. *Id.*

In *Anderson v. Stewart*, *supra*, the supreme court noted that common instances in which the separate corporate identity has been disregarded are when the corporation attempted to 1) evade the payment of income taxes, 2) hinder, delay, and defraud creditors, 3) evade a contract or tort obligation, 4) evade the obligations of a federal or state statute, and 5) perpetrate fraud and injustice generally. Conversely, the courts refused to pierce the corporate veil where the principal party either did not engage in wrong doing or had scrupulously followed corporate formalities. *Id.* We hold that in the instant case, the trial court did not err in piercing the corporate veil for two reasons.

First, Rush-Bradley was seeking to use the corporate facade to shield herself from personal liability for disposing of the Van Ores' property. Significantly, Rush-Bradley does not contest the finding that disposing of the Van Ores' property constitutes the tort of conversion.[1] However, we reject Rush-Bradley's assertion that the trial court erred in holding her personally responsible because Rush-Bradley was not furthering a legitimate corporate purpose by engaging in an intentional tort. Second, there was evidence that Perfect Partners failed to scrupulously follow corporate formalities. Rush-Bradley admitted that she did not maintain minutes of annual shareholder meetings, and she failed to

[1] Conversion is defined as the exercise of dominion over property in violation of the rights of the owner or person entitled to possession. *Alvarado v. St. Mary-Rogers Mem. Hosp.*, 99 Ark. App. 104, 108, 257 S.W.3d 583, 587 (2007).

introduce any financial records that proved that Perfect Partners was maintained as a separate entity. *Cf. Quinn-Matchet Partners, Inc.*, *supra*. Further, it was undisputed that the word " Incorporated" did not appear on Perfect Partners' signs or correspondence. *See Venable v. Becker*, 287 Ark. 236, 697 S.W.2d 903 (1985).

We also find no merit in Rush-Bradley's subpoints regarding the trial court's citation to federal law and the trial court's calculation of the damages. We hold that the trial court did not apply an incorrect standard when it cited a federal case in its order. While it was true that the trial court cited *Heating & Air Specialists, Inc. v. Jones*, 180 F.3d 923 (8th Cir. 1999), that precedent faithfully applied Arkansas law. Likewise, we hold that the trial court did not err in applying the measure of damages for conversion rather than a measure of damages that could apply to a contract case. Although Rush-Bradley claimed that she sold a significant portion of the Van Ores' property, she failed to introduce any documentation to substantiate that claim, and she admitted that she did not pay the Van Ores for any of the items that were allegedly sold.

For her second point, Rush-Bradley argues that the trial court erred in finding that a contract existed between her and the Van Ores. She notes that the consignment was accepted by Kim Freyaldenhoven and asserts that she had " never done business as an individual" at the location where the contract was signed. We also find this argument unpersuasive. In light of the fact that we found no error in the trial court's determination that the corporate veil should be pierced and its conclusion that Rush-Bradley was

personally liable for the improper disposal of the Van Ores' property, the issue of who signed the contract is rendered to be of no moment.

Affirmed.

PITTMAN and BROWN, JJ., agree.