

STATE OF MICHIGAN
COURT OF APPEALS

MARGARET M. MACHAY,

Plaintiff-Appellant,

v

EDWARD MEYER,

Defendant-Appellee,

and

J & M MARINE, INC., and MARC L. JACOB,

Defendants.

UNPUBLISHED

January 19, 2006

No. 253879

Berrien Circuit Court

LC No. 02-003595-CZ

Before: Whitbeck, C.J., and Bandstra and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting summary disposition in favor of defendant Edward Meyer. We affirm.

Plaintiff sued defendant J & M Marine, Inc. for breach of contract and sued defendants J & M, Marc Jacob¹, and Edward Meyer² for conversion and breach of the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq.*, for damages arising out of her purchase and trade-in of boats. Specifically, plaintiff argued that that the corporate veil should be pierced to hold defendant shareholders Jacob and Meyer personally liable for her damages. Meyer moved for summary disposition under MCR 2.116(C)(8) and (10), and the trial court granted the motion.

¹ Jacob held a 40% interest in the corporation, and was president, handling the day-to-day affairs of the business.

² Meyer held a 60% interest in the corporation, and was secretary and treasurer, primarily financing the business. After Meyer became aware that Jacob was mishandling the business, he became sole director of the corporation, and remained as secretary, but appointed someone else to be president and treasurer.

We review de novo a trial court's decision on a motion for summary disposition. *Tipton v William Beaumont Hosp*, 266 Mich App 27, 32; 697 NW2d 552 (2005). Because the parties and the trial court relied on matters outside the pleadings, review under MCR 2.116(C)(10) is appropriate. *Id.* Summary disposition under MCR 2.116(C)(10) is proper when there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id.*

We also review de novo a trial court's decision regarding whether to pierce the corporate veil. *Foodland Distributors v Al Naimi*, 220 Mich App 453, 456; 559 NW2d 379 (1996). However, we will not reverse the trial court's decision unless the factual findings are clearly erroneous, or we are convinced that we would have reached a different result had we been in the trial court's position. *Law Offices of Lawrence J Stockler, PC v Rose*, 174 Mich App 14, 43-44; 436 NW2d 70 (1989).

While "[t]here is no single rule delineating when the corporate entity may be disregarded," "[t]he entire spectrum of relevant facts forms the background for such an inquiry, and the facts are to be assessed in light of the corporation's economic justification to determine if the corporate form has been abused." *Foodland, supra* at 456-457, quoting *Klager v Robert Meyer Co*, 415 Mich 402, 411-412; 329 NW2d 721 (1982). This Court has set out three requisites to piercing the corporate veil: "[f]irst, 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." *Nogueras v Maisel & Assoc of Michigan*, 142 Mich App 71, 86; 369 NW2d 492 (1985). Moreover, improper corporate conduct by an individual will not be attributed to another where notions of equity and justice do not require it. See *Dep't of Consumer & Industry Services v Shah*, 236 Mich App 381, 393-394; 600 NW2d 406 (1999).

Regarding plaintiff's claim against Meyer to pierce the corporate veil, the trial court noted plaintiff's assertion that the corporation was undercapitalized, but found that rather than depleting its financial resources, Meyer actually financed the corporation. Further, the trial court found that while piercing the corporate veil to hold Jacob personally liable was appropriate under the facts of the case, there was no evidence to support plaintiff's allegation that J & M was a mere instrumentality of Meyer, that Meyer used the corporation to commit a fraud or wrong, or that Meyer was individually responsible for plaintiff's loss. The record does not suggest that Meyer used the corporate structure for fraudulent purposes, and we find that any breach of Meyer's duty as treasurer of the corporation was simply a result of his negligence. Moreover, even if the corporation was undercapitalized, there was no evidence that Meyer manipulated J & M for his own financial benefit. No genuine issue of material fact exists that piercing the corporate veil to hold Meyer personally liable is unwarranted; therefore, the trial court properly granted summary disposition in favor of Meyer.

This Court has defined conversion as "any distinct act of dominion wrongfully exerted over another's personal property." *Brennan v Edward D Jones & Co*, 245 Mich App 156, 158; 626 NW2d 917 (2001), quoting *Trail Clinic, PC v Bloch*, 114 Mich App 700, 705; 319 NW2d 638 (1982). "When conversion is committed by a corporation, the agents and officers of the corporation may also be found personally liable for their active participation in the tort, even though they do not personally benefit thereby." *Citizens Ins Co of America v Delcamp Truck Ctr, Inc*, 178 Mich App 570, 576; 444 NW2d 210 (1989).

Regarding plaintiff's claim against Meyer for conversion, the trial court found that while Jacob had been found criminally responsible for the fraud perpetrated on plaintiff and was in prison for that offense, plaintiff failed to produce evidence that Meyer ever received or benefited from monies paid by plaintiff to J & M. In contrast, Meyer produced evidence demonstrating that, as the financial backer of the corporation, he only contributed money, never received any of plaintiff's money, and was unaware of plaintiff's existence until the lawsuit was filed.

The trial court also found that plaintiff's additional argument—that Meyer personally benefited from the fraud because J & M's tax liability was reduced when her money was used to pay back taxes owed to the IRS—was unsupported by the evidence. If a corporate officer is responsible for filing and paying a corporation's taxes, the officer may be held personally liable for the corporation's tax liability. *Peterson v Dep't of Treas*, 145 Mich App 445, 450; 377 NW2d 887 (1985). While Meyer conceded that he was J & M's treasurer and handled the taxes, plaintiff was unable to demonstrate that her money was actually paid to Meyer or that it was used to pay IRS debts, or, that even if it was used in such a manner, that it personally benefited Meyer. No genuine issue of material fact exists that Meyer did not personally convert plaintiff's money; therefore, the trial court properly granted summary disposition in favor of Meyer.

The MCPA is a remedial statute designed to prohibit unfair practices in trade or commerce. *Forton v Laszar*, 239 Mich App 711, 715; 609 NW2d 850 (2000). Specifically, the MCPA prohibits "[u]nfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce." MCL 445.903(1).

Regarding plaintiff's claim against Meyer for violating the MCPA, the trial court noted that it was essentially a fraud statute and found that plaintiff failed to produce evidence to support her assertion that Meyer was guilty of actionable fraud. Moreover, plaintiff conceded that her MCPA claim was contingent on piercing the corporate veil to hold Meyer personally liable. No genuine issue of material fact exists that Meyer did not engage in fraudulent activity to warrant piercing the corporate veil to hold him personally liable; therefore, the trial court properly granted summary disposition in favor of Meyer on plaintiff's MCPA claim.

We affirm.

/s/ William C. Whitbeck
/s/ Richard A. Bandstra
/s/ Jane E. Markey