STATE OF MICHIGAN

COURT OF APPEALS

ALPHA INVESTMENT, L.L.C., ALPHA DIAGNOSTIC CLINIC, P.C., and ALPHA MEDICAL CLINICS, P.C.,

Plaintiffs/Counter-Defendants,

and

ABDALRAHMAN KATRANJI,

Plaintiff/Counter-Defendant-Appellant,

v

ALPHA REAL ESTATE, L.L.C., ALPHA CLINIC, P.C., and FIROZA B. VAN HORN,

Defendants/Counter-Plaintiffs/Third-Party Plaintiffs-Appellees,

and

ALPHA PROPERTIES, L.L.C.,

Third-Party Defendant.

UNPUBLISHED
December 7, 2010

No. 291939
Wayne Circuit Court
LC No. 06-610358-CK

Before: WILDER, P.J., and CAVANAGH and M. J. KELLY, JJ.

PER CURIAM.

In this contract dispute, plaintiff Abdalrahman Katranji appeals as of right the trial court's order dismissing his claims and those of his related businesses, Alpha Investment, L.L.C., Alpha Diagnostic Clinic, P.C., and Alpha Medical Clinics, P.C., and granting summary disposition in favor of defendants Alpha Real Estate L.L.C., Alpha Clinic, P.C., and Firoza B. Van Horn on their counterclaim for breach of contract. Specifically, Katranji argues that he acted as an agent for his various business entities and, for that reason, could not be held individually liable for the judgment entered in favor of Van Horn and her businesses. Although Katranji did not properly preserve this issue for appellate review, we elect to exercise our discretion and consider it.

Because we conclude that there are factual issues regarding whether and to what extent Katranji could be held personally liable for the judgment, we vacate that portion of the judgment holding Katranji jointly and severally liable for the judgment in favor of Van Horn and her businesses and remand this matter the trial court for further proceedings to determine whether and to what extent Katranji should be held jointly and severally liable for the judgment.

I. BASIC FACTS AND PROCEDURAL HISTORY

This dispute arises from the execution and performance of contracts involving the purchase of a medical practice and real property in Taylor and Detroit. In August 2005, Katranji entered into a purchase agreement with Alpha Real Estate, P.C., Alpha Clinic, P.C., and Firoza Van Horn for the purchase of a medical practice and associated real estate in Taylor and Detroit. The agreement stated that Katranji was acting on behalf of two entities that had not yet been formed. As it turns out, Katranji had already formed one entity, Alpha Investment, before executing the purchase agreement, and shortly thereafter formed the other two entities, Alpha Diagnostic Clinic and Alpha Medical Clinics. At the closing, Katranji signed two land contracts, two promissory notes for business assets, and two security agreements, one each for the Taylor property and assets and one each for the Detroit property and assets. Katranji signed each of those documents on behalf of one of his already formed business entities.

After the closing, the parties began to have various disagreements. Plaintiffs ultimately sued defendants, alleging various claims arising out of the parties' business transactions and relationship. Those claims are not at issue on appeal. Defendants counter-sued plaintiffs and also sued another of Katranji's entities, Alpha Properties, L.L.C., alleging breach of contract and various other claims related to the parties' transactions. Both sets of parties brought cross-motions for summary disposition. The trial court granted partial summary disposition on defendants' counterclaim for breach of contract. The trial court determined that there was no genuine issue of material fact that plaintiffs failed to make payments as required by the land contracts and promissory notes, and that defendants' alleged conduct did not excuse those breaches. The trial court eventually entered judgment in favor of defendants for $564,253.64 against all four plaintiffs "jointly and severally."[1]

II. PERSONAL LIABILITY

A. STANDARD OF REVIEW

On appeal, Katranji argues that the trial court erred when it determined on summary disposition that he could be held jointly and severally liable with his businesses for the breach of the various agreements between his businesses and defendants. Because there was no material factual dispute that he was acting on behalf of his entities and not in his individual capacity, the trial court should not have made the liability under the judgment joint and several. This Court

[1] The trial court also dismissed some of plaintiffs' claims on summary disposition. The remaining claims were apparently dismissed by the stipulation of the parties.

reviews de novo a trial court's decision on a motion for summary disposition. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009).

B. PRESERVATION

As a preliminary matter, we shall address defendants' argument that this issue is unpreserved because Katranji did not raise the issue of his individual liability before the trial court granted defendants' motion for summary disposition on their counterclaim. As our Supreme Court has explained, Michigan courts generally follow the "raise or waive" rule of appellate review—that is, "a litigant must preserve an issue for appellate review by raising it in the trial court." *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008). This rule has its origins in judicial efficiency and fundamental fairness to the opposing party:

> By limiting appellate review to those issues raised and argued in the trial court, and holding all other issues waived, appellate courts require litigants to raise and frame their arguments at a time when their opponents may respond to them factually. This practice also avoids the untenable result of permitting an unsuccessful litigant to prevail by avoiding its tactical decisions that proved unsuccessful. Generally, a party may not remain silent in the trial court, only to prevail on an issue that was not called to the trial court's attention. Trial courts are not the research assistants of the litigants; the parties have a duty to fully present their legal arguments to the court for its resolution of their dispute. [*Id.* at 388.]

Although this Court does not have an obligation to review improperly preserved claims of error in a civil case, c.f. *People v Carines*, 460 Mich 750, 761-764; 597 NW2d 130 (1999) (stating that, in an appeal from a criminal conviction, courts should review unpreserved claims of error for plain error affecting the defendant's substantial rights), we do have the discretion to review such claims to prevent a miscarriage of justice. See *Walters*, 481 Mich at 387; see also *Smith v Foerster-Bolser Constr*, 269 Mich App 424, 427; 711 NW2d 421 (2006) ("[T]his Court may overlook preservation requirements if the failure to consider the issue would result in manifest injustice, if consideration is necessary for a proper determination of the case, or if the issue involves a question of law and the facts necessary for its resolution have been presented."). Nevertheless, this Court will exercise that discretion sparingly and only where exceptional circumstances warrant review. *Booth v University of Michigan Board of Regents*, 444 Mich 211, 234 n 23; 507 NW2d 422 (1993).

Although defendants named Katranji in his individual capacity in their counter-suit, Katranji did not assert that he could not be liable for the debts incurred by his business entities in his answer or on summary disposition. Rather, he first raised this issue when he objected to entry of defendants' proposed order granting summary disposition. By that point, the trial court had already determined that defendants were entitled to summary disposition against all the plaintiffs—including Katranji—on their counter-claim for breach of contract. Accordingly, Katranji failed to timely raise this issue before the trial court.

It is well-settled that Michigan courts will respect the separate existence of business entities from their owners. See *Wells v Firestone*, 421 Mich 641, 650; 364 NW2d 670 (1984). This is true even when a single shareholder or member owns the entity. *Rymal v Baergen*, 262 Mich App 274, 293; 686 NW2d 241 (2004). And, although there are times when it may be appropriate for a court to disregard a business' separate existence, see *Foodland Distrib v Al-Naimi*, 220 Mich App 453, 456-457; 559 NW2d 379 (1996), defendants in this case did not ask the trial court to disregard the separate existence of Katranji's entities and did not present any evidence that would warrant disregarding the entities' separate existence.[2] In addition, the undisputed evidence shows that Katranji signed the contracts executed by the parties at the closing on behalf of his business entities and that those entities existed both in fact and at law. See *Campbell v Rukamp*, 260 Mich 43, 46-47; 244 NW 222 (1932) (noting that promoters of a non-existent corporation may be individually liable for business they conduct and contracts they execute before a *de facto* or *de jure* corporation is brought into existence). Hence, in the absence of evidence that would warrant disregarding the separate existence of the entities involved, Katranji could not be individually liable for breaches of those contracts. Further, there is evidence that suggests that at least one of Katranji's entities existed at the time he executed the purchase agreement and that the parties understood that Katranji was signing the purchase agreement on behalf of entities to be formed. And, given the opportunity, Katranji may have been able to present evidence that his remaining entities existed in fact, if not at law. See *Tisch Auto Supply Co v Nelson*, 222 Mich 196, 199-200; 192 NW 600 (1923) (holding that the owners of a corporation could not be liable for debts incurred by the corporation because it existed in fact even though its articles had not yet been filed with the state). Thus, it is quite possible that Katranji was protected by the *de facto* separate existence of his business entities even at the time he signed the purchase agreement. Finally, even if Katranji could be individually liable for a breach of the purchase agreement, it is not clear that there was an actual breach of that agreement. The purchase agreement provided that Katranji would form various business entities that would then purchase the real property and businesses at issue at a later closing. And the evidence shows that Katranji actually formed those entities and those entities purchased the real property and businesses as promised. On this record, it appears that the failure to consider this issue would result in Katranji being individually liable on debts for which he could not otherwise be held liable—that is, it would be manifestly unjust for this Court not to address this issue. *Walters*, 481 Mich at 387. For this reason, we elect to exercise our discretion and review this claim of error.

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[2] We note that it is not necessary to pierce the corporate veil in order to hold corporate officials liable for their own misconduct. See *Dep't of Agriculture v Appletree Mktg, LLC*, 485 Mich 1, 18; 779 NW2d 237 (2010). However, although defendants' counter-complaint against plaintiffs included a claim for conversion, the trial court granted defendants summary disposition and judgment on only their counterclaim for breach of contract.

C. CONCLUSION

For the reasons noted above, we agree that Katranji is entitled—on this record—to have the separate existence of his business entities respected with regard to the contracts executed at the closing. However, we do not foreclose the possibility that further factual development might reveal that Katranji could be partially or wholly liable for the judgment under the purchase agreement alone or because the trial court is otherwise warranted in disregarding the separate existence of those entities. Because Katranji's failure to properly raise this issue at an earlier stage of the litigation deprived defendants of the opportunity to address these issues and marshal facts in their support, we conclude that it would be inequitable to resolve this claim of error on appeal. Rather, we believe that the question of Katranji's individual liability should be addressed by the trial court after a properly supported motion for summary disposition or after a trial on the merits. Accordingly, we vacate the trial court's judgment in favor of defendants to the extent that it makes Katranji individually liable and remand this case for further proceedings consistent with this opinion. See MCR 7.216(7) (noting that this Court may "enter any judgment or order or grant further or different relief as the case may require.").

Vacated in part and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. This appeal having been resolved on an unpreserved issue, we order that no party may tax costs. MCR 7.219(A).

/s/ Kurtis T. Wilder
/s/ Mark J. Cavanagh
/s/ Michael J. Kelly