STATE OF MICHIGAN

COURT OF APPEALS

CHRISTIAN J. VERA, Plaintiff-Appellant,	UNPUBLISHED November 25, 2014
v	No. 317624 Kent Circuit Court
KRISTIAN SKOGEN, ALACRITY HEALTHCARE STAFFING INC., and UNLIMITED MEDSTAFF OF WEST MICHIGAN INC. Defendants-Appellees.	LC No. 11-009705-CK

Before: BOONSTRA, P.J., and DONOFRIO and GLEICHER, JJ.

PER CURIAM.

Plaintiff appeals as of right the order of the trial court granting summary disposition in favor of defendants. Because the trial court properly granted summary disposition under MCR 2.116(C)(7) and MCR 2.116(C)(10), we affirm.

This case arises from plaintiff's attempt to enforce a judgment against defendants Alacrity Healthcare Staffing, Inc. ("Alacrity") and Unlimited Medstaff of West Michigan, Inc. ("Unlimited")[1]. On February 17, 2005, plaintiff was awarded a judgment against Alacrity in the amount of $50,000 and a separate judgment against defendant Unlimited in the amount of $116,100. However, plaintiff thereafter was unable to recover on the judgment against either defendant because the companies were no longer viable.

I. BACKGROUND

Defendant Kristian Skogen owned and operated many different business entities related to medical staffing services, including defendants Alacrity and Unlimited. The same day he

[1] Unlimited Medstaff of West Michigan, Inc. was one of many subsidiaries under Unlimited Medstaff of America (collectively, "the Unlimited Subsidiaries"). All of the Unlimited Subsidiaries had similar names except for the geographic location (e.g., Unlimited Medstaff of Arizona), and all later began to operate under the same name, Alacrity Healthcare Staffing, Inc.

signed the consent judgment, but a few days before the judgment was entered, Skogen issued a letter to all of Alacrity's shareholders, notifying them that because of "several obstacles" to the company's financial health, the company was being liquidated in order to satisfy its outstanding debts. Skogen's cited reasons for the dire financial status included litigation, the depressed market for medical staffing, and a debt of over $850,000 to the IRS. The letter continued to state that it was able to find "a group of investors" to purchase some of the assets, which allowed it to pay down a portion of its outstanding tax liabilities, still leaving $700,000 of secured debt to the IRS plus other obligations, including the amount owed to plaintiff. In his deposition, however, Skogen admitted that, despite referring to "a group of investors" in his letter, he was the only person who purchased the assets.

One of the companies Skogen was involved with was Skogen Management. Skogen Management provided management services, and its only customers were the Unlimited Subsidiaries. The relationship between Skogen Management and Unlimited was documented in an Administrative Services Agreement. Unlimited paid Skogen Management fees of $531,107, $715,202, and $692,604, for the 2000, 2001, and 2002 years, respectively.

Further, there was evidence that Unlimited "advanced" several hundreds of thousands of dollars to Skogen Management. As of December 31, 2002, the amount advanced had grown to $375,023. But a recorded "reserve" totaling $206,397 resulted in the balance due from Skogen Management to be $168,625.

Plaintiff filed the instant suit on October 11, 2011, alleging five counts: one count of Alter Ego, three counts of violating the Uniform Fraudulent Transfer Act ("UFTA"), MCL 566.31 *et seq.*, and one count of Plaintiff's Interest in Successor Corporations.

Defendants moved for summary disposition, arguing that all of plaintiff's claims were time barred. Defendants asserted that claims under the Uniform Fraudulent Transfer Act have at most a six-year limitations period. Thus, plaintiff filing his complaint more than six years after entry of the consent judgment was not timely. Specifically, defendants contended that all the transactions that plaintiff alleged were fraudulent, and acted as a basis to pierce the corporate veil, occurred before January 2005. Consequently, plaintiff filing in October 2011 was more than six years after any claim had accrued. Defendants also argued that plaintiff's attempt to pierce the corporate veil must fail because all of the defendant companies observed all corporate formalities and Skogen did not comingle funds or treat the companies as his alter ego. Defendants lastly argued that plaintiff cannot offer any proof that any of the complained-of transactions were done with the intent to hinder, defraud, or delay a creditor, which is necessary in order to prevail under the UFTA.

In response to defendants' motion, plaintiff argued that the six-year period of limitations from the UFTA did not apply because he was seeking enforcement of a judgment, which carries a 10-year limitations period. Plaintiff also asserted that there was a question of fact whether Skogen "used the corporate veil with the express purpose of avoiding claims by creditors."

The trial court granted defendants' motion under MCR 2.116(C)(7) and MCR 2.116(C)(10). The court determined that three of the five counts in the complaint were expressly based on the UFTA, and because the UFTA has, at most, a six-year limitations period, those

claims were barred. The court was confused by plaintiff's Count V, in which plaintiff sought an ownership interest on the theory of "successor business." The court was not clear on what legal theory plaintiff relied on, but found that, regardless, it would be subject to a maximum of a six-year limitations period under MCL 600.5813 or MCL 600.5807(8). Looking at the remaining count, Count I was labeled "Alter Ego" and requested the court to pierce the corporate veil due to Skogen's alleged abuse of the corporate form to defraud creditors. The court determined that because "an action founded upon a judgment" is subject to a 10-year limitations period, MCL 600.5809(3), this count, on its face, was not barred by the statute of limitations.

Regarding Count I, however, the trial court ruled that plaintiff, at best, showed that some fraudulent transactions occurred, but he failed to present any evidence that Skogen used any of the corporate forms as his own personal instrumentality, which is an essential element in order to pierce the corporate veil. Consequently, the trial court concluded that plaintiff failed to raise a genuine issue of material fact related to Count I, and the court granted summary disposition on that count as well.

II. STANDARD OF REVIEW

We review a trial court's decision on a motion for summary disposition de novo. *Allen v Bloomfield Hills Sch Dist*, 281 Mich App 49, 52; 760 NW2d 811 (2008).

> MCR 2.116(C)(7) allows a party to file a motion for summary disposition on the ground that a claim is barred because of the expiration of the applicable period of limitations. A movant under MCR 2.116(C)(7) is not required to file supportive material, and the opposing party need not reply with supportive material. Moreover, the contents of the complaint are accepted as true unless contradicted by documentation submitted by the movant. [*Fisher Sand & Gravel Co v Neal A Sweebe, Inc*, 494 Mich 543, 553; 837 NW2d 244 (2013).]

A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Weisman v US Blades, Inc*, 217 Mich App 565, 566; 552 NW2d 484 (1996). When deciding a motion for summary disposition under this subrule, a court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence then filed in the action or submitted by the parties in a light most favorable to the nonmoving party. MCR 2.116(G)(5); *Wilson v Alpena Co Rd Comm'n*, 474 Mich 161, 166; 713 NW2d 717 (2006). The motion is properly granted if the evidence fails to establish a genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Michalski v Bar-Leav*, 463 Mich 723, 730; 625 NW2d 754 (2001).

Further, questions of statutory interpretation also are reviewed de novo. *Fisher Sand & Gravel*, 494 Mich at 553.

III. STATUTE OF LIMITATIONS

The trial court granted summary disposition in favor of defendants pursuant to MCR 2.116(C)(7) on Counts II-V because it determined that the claims were barred by the applicable statute of limitations.

In plaintiff's complaint, Counts II-IV were entitled, "Uniform Fraudulent Transfer Act." We are cognizant that the labels used by plaintiff are not controlling on the actual gravamen of the action. See *Adams v Adams*, 276 Mich App 704, 710-711; 742 NW2d 399 (2007) ("It is well established that the gravamen of an action is determined by reading the complaint as a whole, and by looking beyond mere procedural labels to determine the exact nature of the claim.") However, in this case, looking at the exact nature of these counts, they all reference specific violations of the UFTA. Specifically, Counts II and III allege a "violation of MCL 566.34(1)(a)" and "MCL 566.34(1)(b)," which are indeed part of the UFTA. With respect to Count IV, plaintiff alleged that MCL 566.34(1)(a), (b) and MCL 566.35(1), (2) of the UFTA were violated. Thus, the trial court was correct in viewing these claims as claims under the UFTA.

The UFTA provides that the limitation period for a cause of action with respect to a fraudulent transfer under MCL 566.34(1)(a), (b), and MCL 566.35(1) is governed by the six-year limitations period as provided in MCL 600.5813. MCL 566.39(a). Further, any cause of action based on a violation of MCL 566.35(2) must be brought within one year after the transfer was made or the obligation was incurred. MCL 566.39(b). Therefore, with the alleged fraudulent transfers having occurred no later than January 2005, plaintiff's complaint filed in October 2011 was beyond the six-year period, and defendant was entitled to summary disposition for these claims.

The trial court also concluded that any claim related to plaintiff's Count V also was barred by the statute of limitations. In Count V, entitled "Plaintiff's Interest in Successor Corporations," plaintiff alleged that he owned 18.2% share of a company that was previously owned by Skogen. And, without citing to any authority or law, plaintiff then asserts that he still owns 18.2% of Skogen's successor business, Alacrity. As the trial court noted, it is not clear on what legal theory plaintiff is seeking an 18.2% interest in Alacrity. Regardless, MCL 600.5807(8) provides that the period of limitations is six years "for all other actions to recover damages or sums due for breach of contract," and MCL 600.5813 provides that "[a]ll other personal actions" must be commenced within six years after the claims accrue. Therefore, under either avenue, plaintiff had six years to bring such a claim, and his failure to do so results in summary disposition being appropriate for Count V.

Plaintiff argues on appeal that piercing the veil is not a cause of action, itself, and should not be constrained by any limitations period placed by the UFTA. We agree with this assessment, but it is not clear if plaintiff is addressing this argument with respect to his Counts II-V or if he is taking the position that Count I is not subject to the limitations period of the UFTA. If plaintiff is making the former argument, the argument is misplaced because, as discussed, the gravamen of Counts II-V were for violations of the UFTA and for seeking an interest in a successor business. And if plaintiff's argument is the latter, then it also is misplaced because the trial court did not dismiss Count I on the basis of any statute of limitations violation.

IV. GENUINE ISSUE OF MATERIAL FACT

The trial court further granted summary disposition under MCR 2.116(C)(10) in favor of defendant on Count I because it determined that there was no genuine issue of material fact.

"In order for a court to order a corporate veil to be pierced, the corporate entity (1) must be a mere instrumentality of another individual or entity, (2) must have been used to commit a wrong or fraud, and (3) there must have been an unjust injury or loss to the plaintiff." *Florence Cement Co v Vettraino*, 292 Mich App 461, 469; 807 NW2d 917 (2011). In plaintiff's complaint, he alleged that Skogen manipulated the assets of Unlimited and Alacrity for his personal benefit and that he used the corporate form as an instrumentality for his own personal interests. However, in response to defendant's motion for summary disposition, plaintiff failed to offer any evidence that any company was a mere instrumentality of Skogen.

It is undisputed that Skogen was a key player in virtually all of the various entities in this case. But this is insufficient to establish a prima facie case that Skogen used Unlimited and Alacrity as extensions of himself. See *Lawton v Gorman Furniture Corp*, 90 Mich App 258, 266; 282 NW2d 797 (1979). The evidence submitted showed that Skogen did treat the various companies as separate companies. While there were transactions between the companies that arguably could be viewed as "fraudulent," see MCL 566.34, that is not the same as establishing that the entities were mere instrumentalities for Skogen.

Further, while trying to establish that Unlimited and Alacrity were instrumentalities, plaintiff relies on the fact that just within days of the judgment, Alacrity and Unlimited sold their assets to Skogen. Plaintiff stresses how the sale was falsely portrayed as a sale to "a group of investors," when the buyer was only Skogen. While this transaction raises questions regarding whether the transaction was "fraudulent," it does not illustrate that Skogen was using Unlimited or Alacrity as his alter ego. Moreover, he testified that the Unlimited board of directors and shareholders had a meeting, where consent was obtained to sell the assets. This is evidence of Skogen *respecting* the corporate form, not ignoring it and using it as an extension of himself. As further evidence of Skogen respecting the various corporate forms, Skogen Management and Unlimited had a formal written Administrative Services Agreement that spelled out the services that Skogen Management was contracted to perform. This is not characteristic of an entity that is a mere extension of an individual.[2] See *Florence Cement*, 292 Mich App at 470 (stating that the hallmark of an alter ego is that there is no treatment of separate entities).

Plaintiff also claims that Skogen used funds from Crestmark Bank to make the purchase of the assets, instead of using his own funds. Specifically, because the money was "obtained from Unlimited's factor, Crestmark Bank," plaintiff concludes that Skogen purchased the assets with Unlimited's own money. We do not follow plaintiff's leap of logic here. Plaintiff does not expand on why just because Skogen received funds from Crestmark Bank that it means that the funds were truly Unlimited's. A party may not announce a position and then leave it to this Court to discover and rationalize the basis for his claims. *Mitchell v Mitchell*, 296 Mich App 513, 524; 823 NW2d 153 (2012).

[2] Of course, the agreement was between Skogen Management and Unlimited—not Skogen, himself, and Unlimited. But plaintiff in his arguments has treated Skogen Management and Skogen interchangeably.

Therefore, because plaintiff failed to offer any proof that Skogen used any of the entities as an extension of himself, the trial court did not err in granting summary disposition in favor of defendant on Count I.

Affirmed. Defendants, as the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Mark T. Boonstra
/s/ Pat M. Donofrio
/s/ Elizabeth L. Gleicher