STATE OF MICHIGAN

COURT OF APPEALS

GLOBAL CONSULTING DM FENTON ASSOCIATES, LLC,

Plaintiff-Appellant,

v

THE DHTE GROUP, LLC, DHTE GLOBAL, INC., LIANYU HUANG, and DONNA M. MELONIO,

Defendants-Appellees.

UNPUBLISHED
March 11, 2021

No. 353133
Oakland Circuit Court
LC No. 2019-177134-CB

Before: LETICA, PJ., and CAVANAGH and FORT HOOD, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7) (statute of frauds) and (C)(8) (failure to state a claim for relief). We affirm.

I. FACTS AND PROCEEDINGS

Plaintiff is a corporate entity owned by Donald Fenton. Defendants Lianyu Huang and Donna Melonio are the owners of defendants The DHTE Group, LLC ("DHTE Group"), and DHTE Global, Inc. ("DHTE Global"). Huang and Melonio also owned Alternative Energy Systems, LLC (AES), which dissolved in February 2019. According to plaintiff's complaint, the parties and their corporations conducted business related to manufacturing heavy-duty trucks used for coal mining in China. In November 2015, AES contracted with plaintiff to provide engineering services. Their agreement had an anticipated termination date in 2016, but plaintiff and AES agreed to extensions that extended the agreement through December 31, 2018. According to plaintiff, before it agreed to extend the contract, Huang orally assured Fenton that AES was a "viable" entity. Huang also promised Fenton that he would personally pay AES's payments to plaintiff if AES was unable to pay. After AES failed to pay plaintiff amounts due under the contract from August to October 2018, plaintiff terminated its contract with AES.

In a prior action, plaintiff filed suit against AES to recover $29,249.13 owed for unpaid services. AES did not respond, and on February 6, 2019, the trial court entered a default judgment

against AES. On February 20, 2019, Huang filed a certificate of dissolution for AES, leaving the judgment unpaid. Plaintiff brought the instant action in October 2019 against DHTE Group, DHTE Global, Huang, and Melonio to recover the unpaid $29,249.13. As relevant to this appeal, plaintiff's complaint included claims for fraud and misrepresentation, and breach of an alleged oral contract to pay AES's debt. Plaintiff also sought to pierce AES's corporate veil. Defendants moved for summary disposition pursuant to MCR 2.116(C)(7) (statute of frauds) and (8) (failure to state a claim for relief). The trial court granted the motion, and plaintiff now appeals.

II. STANDARD OF REVIEW

The trial court's decision on a motion for summary disposition is reviewed de novo. *Eplee v City of Lansing*, 327 Mich App 635, 644; 935 NW2d 104 (2019). "A motion made pursuant to MCR 2.116(C)(8) tests the legal sufficiency of the complaint, and a court only considers the pleadings." *Id*. (quotation marks and citation omitted). "All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Id*. (quotation marks and citation omitted). Summary disposition may be granted under MCR 2.116(C)(7) when a plaintiff's claim is barred by the statute of frauds. "When reviewing a motion under MCR 2.116(C)(7), a reviewing court must consider all affidavits, pleadings, and other documentary evidence submitted by the parties and construe the pleadings and evidence in favor of the nonmoving party." *Anzaldua v Neogen Corp*, 292 Mich App 626, 629; 808 NW2d 804 (2011).

III. FRAUD AND MISREPRESENTATION

"Common-law fraud or fraudulent misrepresentation entails a defendant making a false representation of material fact with the intention that the plaintiff would rely on it, the defendant either knowing at the time that the representation was false or making it with reckless disregard for its accuracy, and the plaintiff actually relying on the representation and suffering damage as a result." *Barclae v Zarb*, 300 Mich App 455, 476; 834 NW2d 100 (2013), quoting *Alfieri v Bertorelli*, 295 Mich App 189, 193; 813 NW2d 772 (2012). To prove fraud, the plaintiff must demonstrate that

> (1) the [party] made a material representation; (2) the representation was false; (3) when the [party] made the representation, the [party] knew that it was false, or made it recklessly, without knowledge of its truth as a positive assertion; (4) the [party] made the representation with the intention that the [opposing party] would act upon it; (5) the [opposing party] acted in reliance upon it; and (6) the [opposing party] suffered damage. [*Maurer v Fremont Ins Co*, 325 Mich App 685, 695; 926 NW2d 848 (2018) (quotation marks and citation omitted).]

Importantly for this case, "an action for fraud must be predicated upon a false statement relating to a past or existing fact; promises regarding the future are contractual and will not support a claim of fraud." *Cummins v Robinson Twp*, 283 Mich App 677, 696; 770 NW2d 421 (2009). Opinions about future events are not actionable fraud. *Id*. at 695.

Plaintiff's fraud claim is applicable only to defendant Huang. Plaintiff did not allege that Melonio or either of the DHTE entities made any fraudulent misrepresentation. Plaintiff alleged that Fenton relied on Huang's assurances of AES's viability in 2017 when he agreed to extend the

agreement to December 2018. This statement was not a false representation of an existing fact because AES was not dissolved until February 20, 2019. Plaintiff did not allege that AES was in danger of dissolution or otherwise was objectively nonviable when Huang made the representation in December 2017. The statement was Huang's prediction or opinion of AES's future condition. Huang's alleged statements that he would guarantee AES's payments to plaintiff were statements of future promises, and therefore, not actionable as fraud. Therefore, the trial court correctly concluded that dismissal of this claim was warranted under MCR 2.116(C)(8) because plaintiff failed to state an actionable claim for fraud arising from Huang's alleged representations.

IV. BREACH OF CONTRACT

Plaintiff's claim for breach of contract is predicated on Huang's alleged oral promise to personally pay AES's payments to plaintiff if AES was unable to pay. The trial court dismissed this claim pursuant to MCR 2.116(C)(7) because an oral promise to pay the debt of another is not enforceable under the statute of frauds.

Under the statute of frauds, MCL 566.132(1)(b), "[a] special promise to answer for the debt, default, or misdoings of another person" "is void unless that agreement, contract, or promise, or note or memorandum of the agreement, contract, or promise, is in writing and signed with an authorized signature by the party to be charged with the agreement, contract, or promise." MCL 566.132(1)(b). Plaintiff did not allege that Huang's promise was in writing. Moreover, MCR 2.113(C)(1) provides that "[i]f a claim or defense is based on a written instrument, a copy of the instrument or its pertinent parts must be attached to the pleading." Plaintiff did not attach any written agreement supporting his claim that Huang promised to pay AES's debts.

Plaintiff argues, however, that MCL 566.110 provides an exception to the statute of frauds when an oral contract has been partially performed.[1] According to plaintiff, its continuation of work after Huang's alleged promise constituted partial performance, thereby permitting it to enforce the alleged promise. We disagree.

In certain cases, "[i]f one party to an oral contract, in reliance upon the contract, has performed his obligation thereunder so that it would be a fraud upon him to allow the other party to repudiate the contract, by interposing the statute, equity will regard the contract as removed from the operation of the statute." *Dumas v Auto Club Ins Ass'n*, 437 Mich 521, 540; 473 NW2d 652 (1991) (quotation marks and citation omitted). However, as our Supreme Court noted in *Dumas*, caselaw addressing the doctrine of partial performance has generally been limited to contracts involving the sale of land. *Id*. at 540-541.[2] See also *Barclae v Zarb*, 300 Mich App 455,

[1] MCL 566.110 provides that "[n]othing in this chapter contained shall be construed to abridge the powers of the court of chancery to compel the specific performance of agreements, in cases of part performance of such agreements."

[2] In *Dumas*, our Supreme Court noted this limitation with respect to the doctrine of partial performance when it declined to extend the doctrine to cases involving partial performance of contracts not to be performed within a year. *Dumas*, 437 Mich at 541.

475 n 3; 834 NW2d 100 (2013) ("The doctrine of partial performance applies primarily in actions involving land."). Quite similar to this case, in *Brown City Concrete, Inc v Severn*, unpublished per curiam opinion of the Court of Appeals, issued August 18, 2011 (Docket No. 295451),[3] the plaintiff sought enforcement of the defendant's oral promise to pay debts incurred by the defendant's corporation. Although the defendant made some payments after the corporation dissolved, this Court, citing *Dumas*, noted that the partial-performance exception had been applied only to contracts involving the sale of land, and thus declined to apply the exception to an oral promise to pay the debt of another. *Id*. at 5. Although *Brown City* is distinguishable from the instant case because it involved partial performance by the promisor-payer, and not by the promisee-payee, this Court's refusal to apply the partial-performance exception did not rest on that distinction.

Ultimately, plaintiff has provided no caselaw to suggest that we can now extend the doctrine of partial performance to cases other than those involving the sale of land, nor any analysis to suggest that the issue should be revisited in the context of oral agreements. Accordingly, we conclude that the partial-performance exception does not apply to Huang's alleged oral promise to pay AES's debt, and that the trial court properly dismissed this claim pursuant to MCR 2.116(C)(7).

V. PIERCING THE CORPORATE VEIL

Plaintiff lastly argues that its complaint alleged sufficient facts to justify piercing the corporate veil. We disagree.

"In general, the law treats a corporation as an entirely separate entity from its stockholders, even where one person owns all the corporation's stock." *Lakeview Commons Ltd Partnership v Empower Yourself, LLC*, 290 Mich App 503, 509; 802 NW2d 712 (2010). "However, when this fiction is invoked to subvert justice, it may be ignored by the courts." *Foodland Distrib*, 220 Mich App at 456. A court is warranted in disregarding the separate existence of a corporation where (1) the corporate entity is a mere instrumentality of another individual or entity, (2) the entity was used to commit a wrong or fraud, and (3) there is an unjust injury or loss to the plaintiff. *Rymal v Baergen*, 262 Mich App 274, 293-294; 686 NW2d 241 (2004). In *Glenn v TPI Petroleum, Inc*, 305 Mich App 698, 716; 854 NW2d 509 (2014), this Court observed:

> Factors used by courts to determine the propriety of piercing the corporate veil include: (1) whether the corporation is undercapitalized, (2) whether separate books are kept, (3) whether there are separate finances for the corporation, (4) whether the corporation is used for fraud or illegality, (5) whether corporate formalities have been followed, and (6) whether the corporation is a sham.

[3] Unpublished opinions are not precedentially binding under the rule of stare decisis, but they may be considered for their persuasive value. *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136, 145; 783 NW2d 133 (2010).

Plaintiff's complaint alleges that Huang and Melonio "have established a pattern of dissolving a business entity thus avoiding payments of the dissolved entity's obligations . . . ." The complaint also alleges that Huang and Melonio operate multiple entities involved in the same type of business, and that those entities intermingle their funds. Plaintiff failed to explain, however, how its activities with the DHTE defendants were related to AES's failure to pay plaintiff.[4] Indeed, in the instant lawsuit, plaintiff failed to plead that the two DHTE defendants were liable to him on any claim. We thus conclude that, in this lawsuit, plaintiff has failed to allege a legal basis for piercing the corporate veil to reach the individual defendants' personal assets in satisfaction of the prior default judgment.

Affirmed.

/s/ Anica Letica
/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood

[4] This is important in the context of piercing the corporate veil because the same is not considered an independent cause of action. *Gallagher v Persha*, 315 Mich App 647, 664-666; 891 NW2d 505, 513 (2016). We have referred before to the doctrine as a "means of imposing liability on an underlying cause of action." *Kostopoulos v Crimmins*, unpublished per curiam opinion of the Court of Appeals, issued December 29, 2011 (Docket No. 299478), p 4.