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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1462**

SCA License Corporation,
Respondent,

vs.

West Builders, LLC dba Hackbarth Roofing, et al.,
Defendants,
Steve Hackbarth aka Steven Hackbarth dba Hackbarth Roofing,
Appellant.

**Filed May 3, 2011
Affirmed
Stauber, Judge**

Hennepin County District Court
File No. 27CV09832

Christopher K. Loftus, Gurstel Chargo, P.A., Golden Valley, Minnesota (for respondent)

Steven R. Hackbarth, Silver Lake, Minnesota (pro se appellant)

Considered and decided by Stauber, Presiding Judge; Kalitowski, Judge; and Worke, Judge.

UNPUBLISHED OPINION

STAUBER, Judge

On appeal from judgment following a trial on respondent's breach-of-contract claims, appellant argues that the district court (1) abused its discretion by admitting certain evidence and testimony at trial; (2) abused its discretion by piercing the corporate

veil to hold appellant personally liable for the debts of his limited liability company; and (3) erred by holding him personally liable for the debts of his non-registered foreign limited liability company. We affirm.

FACTS

In October 2001, Hackbarth Roofing, Inc. was organized and the Certificate of Incorporation was issued by the Minnesota Secretary of State. Appellant Steve Hackbarth was the corporate president and CEO, as well as the company's only employee. In March 2005, Hackbarth statutorily dissolved Hackbarth Roofing, Inc. and filed a Certificate of Assumed Name with the Minnesota Secretary of State reciting West Builders, LLC, a Washington limited liability company, as the entity conducting business in Minnesota under the assumed name of Hackbarth Roofing. West Builders' principal place of business is Minnesota and it does not have any employees or offices in Washington.

In April 2005 and 2006, Hackbarth signed agreements for advertising services with respondent SCA License Corporation (SCA). Under the terms of the agreements, SCA agreed to provide radio advertisements for Hackbarth Roofing. The agreements also required that any cancellation notice must be conveyed via certified mail with a return receipt requested in order to commence the notice period.

In January 2009, SCA brought an action against West Builders, Hackbarth Enterprises Corporation, and Hackbarth individually, alleging that the named defendants failed to pay for the advertising services provided by SCA. The complaint sought damages in the amount of \$12,460, plus interest, for advertising services rendered.

Hackbarth disputed SCA's claims, alleging that he canceled the broadcast order and that SCA "was actually overpaid \$5,220 due to [SCA's] improper billing."

On September 10, 2008, SCA served Hackbarth with discovery requests, including requests for admission. SCA's requests for admission were never answered. In May 2009, Hackbarth moved to dismiss the named defendants due to lack of service. The district court granted the motion in part, dismissing defendants West Builders and Hackbarth Enterprises due to improper service. But the district court concluded that Hackbarth was properly served and, therefore, denied Hackbarth's motion to dismiss Hackbarth individually.

At trial, the district court admitted SCA's Exhibit 6 into evidence, which consisted of SCA's request for admissions. The district court also admitted SCA's Exhibit 2, the contracts between Hackbarth Roofing and SCA, which included the terms and conditions of the agreement. Moreover, SCA's general manager Ron Stone testified as to his understanding of the agreements between the parties. Testimony was also admitted demonstrating that West Builders was not a properly registered foreign company.

Hackbarth disputed the number of times that his advertisement was played on the radio and, therefore, disagreed with the amount that was invoiced. Hackbarth also claimed that he sent a cancellation notice to SCA on August 1, 2005, directing SCA to stop running his advertisements. Finally, Hackbarth's wife testified that she faxed the cancellation notice to SCA and also mailed the notice uncertified via the United States Postal Service. Stone claimed that SCA's files had no record of receiving the notice of cancellation.

The district court found that under the terms of the broadcast agreement, a cancellation notice must be sent by certified mail. The district court found that because Hackbarth attempted to cancel the agreement by allegedly sending the notice by regular mail, the cancellation notice was ineffective. The district court also found that because West Builders is not registered as a foreign company in Minnesota, Hackbarth, as the sole shareholder and owner, is personally liable for any debt incurred by West Builders. The district court concluded that Hackbarth is personally liable for West Builder's debts because the limited liability company "is simply [Hackbarth's] alter-ego." Thus, the district court granted judgment in favor of SCA in the amount of \$12,460, plus interest. This appeal followed.

D E C I S I O N

I.

The district court has wide discretion to make evidentiary rulings. *Yamry-Smoley v. Zehrer*, 432 N.W.2d 480, 483 (Minn. App. 1988), *review granted* (Minn. Jan. 31, 1989) *and appeal dismissed* (Minn. Apr. 10, 1989). To constitute reversible error, an evidentiary ruling must be prejudicial. *Midway Ctr. Assocs. v. Midway Ctr., Inc.*, 306 Minn. 352, 356, 237 N.W.2d 76, 78 (1975). A district court should grant a new trial "only if there is a strong probability that it will render a different result." *Gunderson v. Olson*, 399 N.W.2d 166, 168 (Minn. App. 1987), *review denied* (Minn. Mar. 18, 1987).

Hackbarth argues that the district court abused its discretion by (1) admitting into evidence SCA's Exhibit 2; (2) allowing Stone to testify about SCA's contracts with Hackbarth Roofing; and (3) admitting Exhibit 6, SCA's request for admissions.

A. Exhibit 2

Over Hackbarth's objection, the district court admitted SCA's Exhibit 2, which consists of the "Terms and Conditions" accompanying SCA's broadcast orders.

Hackbarth argues that the admission of Exhibit 2 was an abuse of discretion because the document is irrelevant and was "never part of any agreement" between SCA and Hackbarth Roofing.

Evidence is relevant so long as it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Minn. R. Evid. 401. Here, the issue at trial was whether SCA was entitled to payment for services rendered under the terms of the agreement between SCA and Hackbarth Roofing. The challenged exhibit consisted of the specific terms and conditions of this agreement. Thus, Exhibit 2 was relevant to the issue before the court, and the district court did not abuse its discretion by admitting the document.

B. Ron Stone's testimony

At trial, Stone testified with respect to SCA's sales accounts with Hackbarth Roofing. But Hackbarth asserts that Stone did not begin his employment with SCA until 2009, several years after SCA contracted with Hackbarth Roofing. Thus, Hackbarth argues that Stone's testimony "should not have been allowed" because Stone had no personal knowledge of the agreement between SCA and Hackbarth Roofing.

The rules of evidence provide that "[a] witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal

knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony.” Minn. R. Evid. 602.

Here, Stone testified that as general manager, he oversees the programming and all the accounting and administration of sales accounts. Stone also testified that he has access to all of SCA's sales accounts, that he has specific knowledge of the company's advertising and accounting procedures, and that he reviewed Hackbarth Roofing's account prior to trial. Stone's testimony established that he had personal knowledge of the agreement between SCA and Hackbarth Roofing. Although Stone was not an employee of SCA at the time of the agreement between the parties, Stone's testimony was limited to his experience as SCA's general manager and his understanding of the terms of the agreement based on his experience as general manager. Moreover, Hackbarth has failed to explain how he was prejudiced by the admission of Stone's testimony. Therefore, the district court did not abuse its discretion by admitting Stone's testimony.

C. Exhibit 6

“A party may serve upon any other party a written request for the admission . . . of the truth of any matters within the scope of [the discovery rules] . . . that relate to statements, opinions of fact, or the application of law to fact.” Minn. R. Civ. P. 36.01. If the party does not respond to the request within 30 days of being served, the matter is deemed admitted. *Id.* “Any matter admitted pursuant to [rule 36] is conclusively established unless the court on motion permits withdrawal or amendment of the admission.” Minn. R. Civ. P. 36.02. Rulings pertaining to rule 36 are within the district

court's discretion and will not be overturned absent an abuse of that discretion. *See Dahle v. Aetna Cas. & Sur. Ins. Co.*, 352 N.W.2d 397, 402 (Minn. 1984) (stating that allowing an extension for responding to requests for admission is within the discretion of the district court).

Here, the record reflects that Hackbarth was served with requests for admission on or about September 10, 2008. The record also reflects that Hackbarth failed to respond to SCA's discovery requests. At trial, SCA moved to admit the requests for admission into evidence as Exhibit 6. The district court admitted Exhibit 6, concluding that "the statements contained in the Request for Admission are deemed admitted by reason of [Hackbarth's] failure to answer the same as provided" by rule 36.

Hackbarth argues that the district court abused its discretion by admitting Exhibit 6 because he should not be required to answer the requests for admission when there was a question as to jurisdiction over the matter. Hackbarth further argues that the requests for admission submitted by SCA were requested solely to try to gain an admission by default, which is not a favored way to dispose of litigation in Minnesota.

We acknowledge the premise that "the admission that otherwise would result from a failure to make a timely answer should be avoided when to do so will aid in the presentation of the merits of the action and will not prejudice the party who made the request." *Dahle*, 352 N.W.2d at 402. (quotation omitted). But *Dahle*, cited by Hackbarth, specifically and exclusively addressed the effects of a party's failure to *timely* file admissions, not a party's refusal to participate in discovery. *See id.* (stating that "[t]his case does not involve a failure to answer requests for admission—it only involves

an untimely response”). Here, Hackbarth completely failed to answer or otherwise respond to SCA’s requests for admission and did not move for protective relief. Moreover, despite Hackbarth’s claim that jurisdiction was an issue, the record reflects that Hackbarth’s motion to dismiss for lack of jurisdiction was not filed until eight months after the discovery requests were due. And “[a]lthough some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules.” *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). Rule 36 unambiguously states that if a party does not respond to a request for admissions within 30 days of being served, the matter is deemed admitted. Minn. R. Civ. P. 36.01. By declining to answer SCA’s requests for admission, Hackbarth failed to comply with the rule. Accordingly, the district court did not abuse its discretion when, by operation of rule, it admitted Exhibit 6.

II.

“Piercing the corporate veil is an equitable remedy that may be applied in order to avoid an injustice.” *Equity Trust Co. Custodian ex re.l Eisenmenger IRA v. Cole*, 766 N.W.2d 334, 339 (Minn. App. 2009). This court reviews a district court’s exercise of its equitable powers for an abuse of discretion. *Id.* And appellate courts review for clear error the district court’s factual findings in support of its decision to pierce the corporate veil. *Id.*

The shareholders of a corporation ordinarily are not personally liable for the corporation’s debts. Minn. Stat. § 302A.425 (2010). Under limited circumstances,

however, a district court may pierce the corporate veil to hold a party liable for the acts of a corporate entity. *Victoria Elevator Co. v. Meriden Grain Co.*, 283 N.W.2d 509, 512 (Minn. 1979). Such circumstances exist when the corporation was formed as the shareholder’s “alter ego” or as a mere “instrumentality” and there is an “element of injustice or fundamental unfairness” to be avoided. *Id.*; *Cole*, 766 N.W.2d at 339. Several factors are considered when determining whether a corporation was formed as the shareholder’s alter ego, including whether (1) there is sufficient capitalization for purposes of corporate undertaking; (2) corporate formalities have been observed; (3) dividends have been paid; (4) the debtor corporation was solvent at the time of the transaction in question; (5) the dominant shareholder siphoned funds; (6) there is a nonfunctioning of other officers and directors; (7) there is an absence of corporate records; and (8) the corporation exists as a mere façade for individual dealings. *Victoria Elevator*, 283 N.W.2d at 512. “When using the alter ego theory to pierce the corporate veil, courts look to the reality and not form, with how the corporation operated and the individual defendant’s relationship to that operation.” *Hoyt Props., Inc. v. Prod. Res. Group, L.L.C.*, 736 N.W.2d 313, 318 (Minn. 2007) (quotation omitted).¹

Hackbarth argues that the district court abused its discretion by piercing the corporate veil because none of the factors set forth in *Victoria Elevator* were considered by the court. We disagree. The district court pierced the LLC protective veil and held

¹ We recognize that West Builders is a limited liability company and not a corporation. But we note that the law governing corporations is the basis for, and guides our interpretation and application of, the law governing limited liability companies. *Stone v. Jetmar Props., LLC*, 733 N.W.2d 480, 486 (Minn. App. 2007).

Hackbarth personally liable for West Builders' debts on the basis that "West Builders . . . is simply [Hackbarth's] alter-ego." This decision is supported by the record. The record reflects that West Builders was organized in the State of Washington, but conducted most of its business in Minnesota and Wisconsin and none in Washington. The record also reflects that, as a foreign limited liability company, West Builders failed to follow LLC formalities by failing to file a certificate of authority with the Minnesota Secretary of State. The record further reflects that West Builders is merely a shell, and has no board of directors and no other LLC members, officers or employees. Finally, the reality of West Builder's operations consisted of Hackbarth making all the decisions, and the company's sole existence was to be a veil for Hackbarth's personal roofing business. This is a classic example of an attempt by a fictitious or shell organization to shield wrongdoers from liability for debts personally incurred. Although the district court did not separately analyze each factor set forth in *Victoria Elevator*, the presence of several critical factors supports the district court's exercise of its equitable powers to pierce the company veil. These factors include: (1) the lack of West Builders following LLC formalities; (2) the absence of LLC records; and (3) West Builders's existence as a mere façade for Hackbarth's individual dealings. Accordingly, on this record, the district court did not abuse its discretion by piercing the LLC veil and by holding Hackbarth personally liable for the advertising debts.

Because the district court did not abuse its discretion by piercing the LLC veil and awarding judgment against Hackbarth personally, we need not address Hackbarth's other

claim of error relating to West Builders' failure to comply with Minnesota statutes precluding transaction of business in this state without a certificate of authority.

Affirmed.