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STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0407

Alerus Financial, National Association,
as successor to Prosperan Bank
f/k/a Washington County Bank,
Respondent,

vs.

The Martin Holdings, LLC, et al.,
Defendants,

Jennifer Igo, et al.,
Appellants.

Filed December 9, 2013
Affirmed
Hudson, Judge

Ramsey County District Court
File No. 62-CV-11-1664

Andrew J. Holly, David L.D. Faith II, Dorsey & Whitney, LLP, Minneapolis, Minnesota (for respondent)

Eric J. Magnuson, Robins, Kaplan, Miller & Ciresi, L.L.P., Minneapolis, Minnesota (for appellants)

Considered and decided by Stoneburner, Presiding Judge; Hudson, Judge; and Hooten, Judge.

U N P U B L I S H E D O P I N I O N

HUDSON, Judge

In this case arising from the sale of real estate by a corporate entity, appellant challenges the district court's holding that she violated the Minnesota Uniform Fraudulent Transfer Act (MUFTA) when she directed the corporation to transfer the proceeds of the sale to herself instead of satisfying corporate loan obligations to respondent. Appellant contests (1) the district court's finding that she transferred an "asset" under MUFTA, (2) the district court's findings that the corporation was insolvent and that appellant did not receive reasonably equivalent value, and (3) the district court's equitable determination that appellant breached her fiduciary duty to respondent. Respondent, by notice of related appeal, challenges the district court's failure to pierce the corporate veil and its decision not to award respondent's attorney fees in conjunction with its equitable division of the proceeds. We affirm.

FACTS

Appellant Jennifer Igo obtained two money judgments against her ex-husband Richard Igo and his corporate assets during marriage-dissolution proceedings in 2008. Among those corporate assets was a company called Historic Renovations, Inc. (HRI), which owned two St. Paul properties, on Dayton and Selby Avenues, and three properties in Pennsylvania. When Richard Igo failed to pay the money judgments to appellant, the judgments were entered directly against HRI. Appellant then memorialized her divorce judgments as liens against the Dayton property. The lien total was approximately $796,805.37. Through enforcement of those judgments, appellant acquired sole

controlling interest in HRI. HRI also owned a 50% stake in Martin Holdings, LLC, which held other real estate in its own name. Appellant was the lone officer and director of both HRI and NIM LLC, a limited-liability company she formed for the purpose of collecting on the various judgments.[1]

Prior to appellant's acquisition of HRI, respondent Alerus Financial, NA made two loans to Martin Holdings and one loan to HRI. The loans issued to Martin Holdings were secured with mortgages against properties in St. Paul and Woodbury and unconditionally guaranteed by HRI, Richard Igo, and Richard Igo's longtime friend and business partner Michael Wagner and his wife Joanne Wagner, each of whom explicitly agreed to joint and several liability. The third loan, which was issued to HRI and secured with a mortgage against the Dayton property, was paid off in full and is not the subject of this litigation.

Appellant testified that she faced several obstacles as she attempted to assume control of HRI and liquidate its properties to satisfy her marriage-dissolution judgments. Michael Wagner, who owned a corporate entity that managed the Selby and Dayton properties, refused to relinquish control and filed a lawsuit asking a Ramsey County district court to determine what rights appellant had in HRI. As court proceedings with appellant's ex-husband dragged on, stays imposed by family and bankruptcy courts forced her to maintain the properties instead of selling them. Appellant further testified

[1] Jennifer Igo and NIM LLC are both named appellants in this matter. For simplicity, we refer to them collectively as "appellant."

that the properties were mismanaged, in disrepair, under-rented, and burdened with unpaid taxes, requiring her to spend significant sums of her own money to maintain them.

In April 2010, respondent notified Martin Holdings that it was in default on its two loans. Respondent also sent default notices to the co-guarantors, but directed HRI's notice to Richard Igo's address. Appellant claims that she never received the notice of default but stipulated that she was aware to some extent of HRI's obligations as a co-guarantor. The district court found that the unpaid principal at the time of default totaled $902,984.62 on the two loans, a figure that had increased to over $1.08 million by the time judgment was entered against HRI and other defendants in February 2012.

In March 2011, appellant directed HRI to sell the Dayton property for $1,850,000. To facilitate the sale, appellant released her judgment liens on the property. At closing, appellant paid $116,410.84 in back taxes and $545,709.26 to respondent to satisfy the mortgage on the property. The remaining $1,058,292.18 went to HRI. Appellant testified that she transferred the entire remaining sum to her personal account shortly thereafter. Respondent concedes that appellant, as a creditor of HRI, had an unsecured claim of $796,805.37 against the company at the time of the transfer.

Respondent initially brought this lawsuit against HRI and various other defendants—not including appellant—in March 2011. Respondent later amended the complaint to allege that appellant had fraudulently transferred the proceeds of the sale of the Dayton property to herself. The district court entered summary judgment against all defendants except appellant and NIM LLC.

At a bench trial, the district court concluded that appellant's transfer of the amount of the proceeds that exceeded her judgment liens violated Minn. Stat. § 513.45(a) (2012), which prohibits debtors from transferring assets without receiving reasonably equivalent value if they are insolvent at the time or become insolvent as a result of the transfer. The district court also held that appellant's transfer of the amount equal to her judgment liens violated Minn. Stat. § 513.45(b) (2012), which prohibits debtors from making transfers to insiders for antecedent debts if they are insolvent and the insiders know of the insolvency. The district court ordered appellant to return the transferred $1,058,292.18 to HRI to be divided equitably among appellant and respondent as the company's creditors. When appellant and respondent failed to agree on an equitable division themselves, the district court ordered that 54.4% be allocated to respondent and 45.6% to appellant. This appeal follows.

D E C I S I O N

I

Appellant argues that the transfer from HRI to herself of proceeds from the sale of the Dayton property did not constitute a transfer under MUFTA because the Dayton property was not an "asset" under MUFTA to the extent it was encumbered by appellant's valid judgment liens.

The district court did not specifically address the issue of whether the transaction actually constituted the transfer of an asset under MUFTA. It is nevertheless a "threshold question" in MUFTA claims, *Butler v. Goldetsky (In re Butler)*, 552 N.W.2d 226, 231 (Minn. 1996), and raises an issue of statutory construction, which we review de novo, *Lee*

v. Lee, 775 N.W.2d 631, 637 (Minn. 2009). "Our goal when interpreting statutory provisions is to ascertain and effectuate the intention of the legislature. If the meaning of a statute is unambiguous, we interpret the statute's text according to its plain language." *Brua v. Minn. Joint Underwriting Ass'n*, 778 N.W.2d 294, 300 (Minn. 2010) (quotation and citations omitted).

Under MUFTA, a transfer is "every mode . . . of disposing of or parting with an asset or an interest in an asset." Minn. Stat. § 513.41(12) (2012). An asset is "property of a debtor," excluding "property to the extent *it* is encumbered by a valid lien." *Id.* (2)(i) (emphasis added). A valid lien is a "charge against or an interest *in property* to secure payment of a debt or performance of an obligation" that is effective against the holder of a subsequent lien. *Id.* (8), (13) (emphasis added).

By their plain language, these statutory provisions provide that only the actual lien-encumbered property, "to the extent *it* is encumbered," *id.* (2)(i) (emphasis added), falls outside MUFTA's definition of "asset." *See Fleming Cos., Inc. v. Rich*, 978 F. Supp. 1281, 1300 (E.D. Mo. 1997) (interpreting the plain language of a substantially identical provision of Missouri's Uniform Fraudulent Transfer Act to hold that only the property actually encumbered by the lien, not the proceeds from its sale, is protected from creditors).

This interpretation accords with MUFTA's purpose, which is to prevent debtors from placing property that could otherwise be used to satisfy their debts beyond the reach of their creditors. *Butler*, 552 N.W.2d at 232. Because a lienholder's claim of right to an encumbered property always trumps that of a general creditor, a debtor cannot use that

property to satisfy general debts and MUFTA does not apply to the extent of the lien. *See id.* ("If the property transferred is not subject to the claims of creditors, the rules as to fraudulent conveyances do not apply." (quotation omitted)). Axiomatically, if a property becomes unencumbered, and thus subject to a general creditor's valid claim, it becomes an asset under MUFTA.

Appellant's judgment liens were against the Dayton property, not the cash proceeds of its sale, which were not encumbered by any liens. Furthermore, appellant released all of her judgment liens against the Dayton property to facilitate the sale. Whether, as appellant argues, she could have structured the transaction to avoid a fraudulent transfer has no bearing on whether the funds became assets under MUFTA. The threshold issue is not whether appellant could have structured the transaction so that the property transferred was not an asset, but whether the property actually constituted an asset at the time appellant transferred it. *See id.* at 231 (describing the "threshold question" as "whether a *particular event* qualifies as a 'transfer'" (emphasis added)). Appellant cites to no authority suggesting otherwise. Once appellant released her judgment liens and liquidated the Dayton property into general corporate assets to which respondent had a valid claim, MUFTA's lien-shielding provision no longer applied, and the unencumbered property and cash proceeds from its sale became an asset under the statute.

II

Appellant argues that, even if an asset was transferred, respondent's MUFTA claims fail because respondent did not establish that HRI was (a) insolvent and (b) did

not receive reasonably equivalent value for the funds. Respondent brought its MUFTA claims under Minn. Stat. § 513.45 (2012), which identifies two types of fraudulent transfers. The first statutory provision prohibits debtors from making transfers without receiving reasonably equivalent value if they are insolvent or will become insolvent because of the transfer. Minn. Stat. § 513.45(a). The second provision prohibits insolvent debtors from transferring money to an insider in satisfaction of an antecedent debt if the insider has "reasonable cause to believe that the debtor was insolvent." *Id.* (b).

The district court held that appellant's transfer of the proceeds that exceeded her judgment liens violated Minn. Stat. § 513.45(a), while her transfer of proceeds equal to her judgment liens violated Minn. Stat. § 513.45(b). To support those holdings, the district court found that HRI was insolvent at the time of a transfer to an insider who knew of the insolvency and did not give reasonably equivalent value.

Insolvency

Appellant argues that the district court erred when it found HRI insolvent because it failed to consider that HRI was entitled to contribution from the other co-guarantors of the relevant loans in proportion to their liability. Under MUFTA, a "debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets, at a fair valuation." Minn. Stat. § 513.42(a) (2012).

The district court calculated the total value of HRI's assets—the proceeds of the Dayton property sale, the value of the Pennsylvania properties, and its 50% interest in Martin Holdings—at just over $1.55 million. The district court valued the company's liabilities—its combined debts to respondent and appellant—at nearly $1.7 million. Once

HRI made the transfer of proceeds to appellant, the district court valued its remaining assets at $500,000 and its outstanding debts at $902,984.62. Because the value of HRI's liabilities exceeded the value of its assets both before and after the transaction, the district court found that the company was "insolvent at the time of the transfer and as a result of the transfer." Other than mentioning Richard Igo and the Wagners as co-guarantors, appellant did not introduce any evidence at trial indicating that she was likely to receive contribution.

"In an appeal from a bench trial, we do not reconcile conflicting evidence. We give the district court's factual findings great deference and do not set them aside unless clearly erroneous." *Porch v. Gen. Motors Acceptance Corp.*, 642 N.W.2d 473, 477 (Minn. App. 2002) (citation omitted), *review denied* (Minn. June 26, 2002). Under this standard, a district court's findings of fact "should not be reversed merely because the appellate court views the evidence differently." *Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). Instead, we view the evidence in the light most favorable to the verdict, and we will not disturb a district court's findings if "there is reasonable evidence to support" them. *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 797 (Minn. 2013) (quotation omitted).

The co-guarantors, including HRI, had a valid agreement establishing joint and several liability, and each was therefore liable for the entire debt. *Estate of Frantz v. Page*, 426 N.W.2d 894, 902 (Minn. App. 1988), *review denied* (Minn. Sept. 16, 1988). A party that has paid more than its share of the debt may pursue a contribution action against other parties that are jointly and severally liable. *Senn v. Youngstedt*, 589 N.W.2d

314, 315–16 (Minn. App. 1999), *review denied* (Minn. May 18, 1999). Minnesota courts have recognized that contribution owed can count as a credit against indebtedness. *Frantz*, 426 N.W.2d at 902. But Minnesota fraudulent-transfer law still requires a "fair valuation" of assets and liabilities to determine insolvency. Minn. Stat. § 513.42(a). In other words, "the present *fair salable value* of [a debtor's] assets" must exceed "*probable* liabilities." *Neubauer v. Cloutier*, 265 Minn. 539, 544, 122 N.W.2d 623, 628 (1963) (emphasis added).

Appellant argues that respondent did not meet its burden of proof to establish a MUFTA claim because it did not sufficiently counter her contribution argument. We disagree. Respondent introduced sufficient evidence to show that, on a fair valuation, HRI's probable liabilities exceeded its assets. The record indicates that appellant made a passing reference to a possible contribution argument and introduced no evidence to support it. Moreover, the undisputed record indicates that the other parties liable for the debt were an ex-husband who had declared bankruptcy and persistently refused to pay judgments to appellant, a company whose mortgage default gave rise to the debt in the first place, and a married couple that owned that company but failed to save it from default. Even if appellant sufficiently raised the contribution argument at trial, the record provided virtually no support for the district court to find that appellant's right to contribution should count toward the fair valuation of HRI's assets and liabilities. Consequently, the district court did not err in finding that HRI's liabilities exceeded its assets.

Reasonably equivalent value

Appellant argues that the district court erred in finding that HRI did not receive reasonably equivalent value for the over $261,000 she transferred to herself in excess of her judgments because she presented sufficient evidence to show that HRI owed her a debt at least equal to the entire sum. To prevail on a MUFTA claim under Minn. Stat. § 513.45(a), respondent must show that HRI did not receive "a reasonably equivalent value in exchange for the transfer." Value is given for a transfer if "an antecedent debt is secured or satisfied." Minn. Stat. § 513.43(a).

The district court found that $1,058,292.18 was transferred from HRI to appellant and approximated the value of appellant's judgment liens against HRI at $796,805.37. When the district court discussed appellant's testimony that she used the entire sum to "pay off her judgments, satisfy debts and pay taxes," it found that appellant had "presented no evidence showing that the cash was used in such manner." The district court thus found that HRI did not receive reasonably equivalent value for the $261,486.81 in excess of the value of her judgment liens in violation of Minn. Stat. § 513.43(a).

We review a district court's findings of fact for clear error. *Porch*, 642 N.W.2d at 477. We view the evidence in the light most favorable to the verdict and will not disturb a district court's findings if "there is reasonable evidence to support" them. *Rasmussen*, 832 N.W.2d 790 at 797 (quotation omitted). We give due regard to a district court's assessment of witness credibility. Minn. R. Civ. P. 52.01.

Appellant testified at trial that she spent significant sums to pay off debts and taxes on the Dayton property. The district court, which was best positioned to assess appellant's credibility, found her testimony not credible because she "presented no evidence" to support it. While respondent stipulated that appellant was "forced to maintain [HRI's] properties," and two of respondent's witnesses testified similarly, we have found nothing in the record documenting the extent of the additional debts that HRI allegedly owed appellant. The district court did not err when it declined to find that appellant had established that the transfer satisfied additional debts beyond the value of the judgment liens.[2]

III

Appellant argues that the district court erred by holding that she owed respondent a fiduciary duty and by declining to estop respondent from asserting that it was owed a fiduciary duty. The directors and officers of a corporation that is insolvent or on the verge of insolvency are "fiduciaries of the corporate assets for the benefit of creditors." *Snyder Elec. Co. v. Fleming*, 305 N.W.2d 863, 869 (Minn. 1981). This fiduciary duty prevents such directors or officers, even ones with legitimate antecedent debts, from using "their special position [to] treat themselves to a preference over other creditors."

[2] We also note that, even if appellant presented evidence that she was owed legitimate debts at least equal to the additional $261,000, MUFTA still prohibits insolvent debtors from transferring money to an insider in satisfaction of an antecedent debt if the insider knows of the insolvency. Minn. Stat. § 513.45(b). In other words, even if the district court clearly erred in its application of section 513.45(a), section 513.45(b) would still prohibit appellant's transfer in any amount.

Id. The burden is on the fiduciary to show that the payment "was made in good faith and was not a preference." *Id.*

The district court determined that appellant, as the sole director and officer of HRI, breached her fiduciary duty by favoring herself over respondent as a creditor and presented no evidence of good faith to excuse the preferential treatment. Breach of fiduciary duty is an equitable determination, *R.E.R. v. J.G.*, 552 N.W.2d 27, 30 (Minn. App. 1996), which we review for an abuse of discretion, *City of N. Oaks v. Sarpal*, 797 N.W.2d 18, 23 (Minn. 2011). A district court has abused its discretion if "its decision is against the facts in the record" or its "ruling is based on an erroneous view of the law." *Id.* at 24.

Breach of fiduciary duty

The district court rested its fiduciary-duty determination on undisputed facts indicating that appellant knew of HRI's guarantor obligations on the Martin Holdings debts. Specifically, the district court found that appellant directed HRI to make payments to Martin Holdings to satisfy the debts in question, that she "was aware of [HRI's] obligations to [respondent] though there is dispute about whether she received Notice of Default," and that appellant had recognized HRI's guarantor obligations prior to the sale of the Dayton property. Appellant's own stipulations corroborate these findings.

Thus, the undisputed record demonstrates that, at the time of the transfer, appellant knew of her obligations to respondent as a guarantor of Martin Holdings. The district court determined that appellant breached her fiduciary duty when she "favor[ed] herself

over other creditors" and had "not presented evidence of good faith" to rebut the presumption that she breached this duty.

Although appellant argues that the transfer was in good faith because she did not know that HRI's debts to respondent were due in full, it does not appear from the record that appellant investigated potential claims of other creditors before transferring nearly all of the company's assets to herself, despite the fiduciary duty she owed other creditors as the director of an insolvent company.[3] The district court did not abuse its discretion.

Equitable estoppel

Appellant argues that respondent "clearly was not entitled to equitable relief" because it continued to lend to Martin Holdings after appellant memorialized judgments against the Dayton property, acted improperly in a garnishment proceeding, and failed to provide proper financial information about HRI's loan obligations. We disagree.

Respondent's lending practices and criteria—with respect to Martin Holdings or anyone else—have little or no relevance to the issues presented here. Moreover, respondent, as HRI's mortgage lender and creditor, had "no special duty to counsel [appellant] and inform [her] of every material fact relating to the transaction." *Klein v. First Edina Nat'l Bank*, 293 Minn. 418, 422, 196 N.W.2d 619, 623 (1972). To the contrary, it was appellant, as the director of HRI, who had the fiduciary duty to the company's creditors. While respondent could have been more forthcoming with

[3] Appellant testified at trial that respondent initially blocked her attempts to learn more about the guaranties, but that she learned about the guaranties in November 2010. The Dayton property sale occurred in April 2011. Appellant does not argue, nor does the record show, that she investigated the guaranties in conjunction with the Dayton property sale.

information concerning the loans and guaranties, the record indicates that appellant could have asked respondent's representative about the guaranties and received the information she wanted. And although the doctrine of equitable estoppel would prevent respondent from benefitting from "representations or inducements" upon which appellant reasonably relied to her detriment, *N. Petrochemical Co. v. U.S. Fire Ins. Co.*, 277 N.W.2d 408, 410 (Minn. 1979), in our view, respondent's actions do not preclude it from obtaining equitable relief. Accordingly, the district court did not abuse its discretion in refusing to apply the doctrine of equitable estoppel.

IV

By related appeal, respondent argues that the district court erred when it declined to pierce the corporate veil and hold appellant personally liable for HRI's debts. Disregard of the corporate form is appropriate when the corporation acts as a mere "alter ego" or "instrumentality" of the controlling party and an "element of injustice or fundamental unfairness" is present. *Victoria Elevator Co. of Minneapolis v. Meriden Grain Co., Inc.*, 283 N.W.2d 509, 512 (Minn. 1979) (quotation omitted).

The district court determined that "[i]t would be exceedingly unfair to pierce the corporate veil to reach [appellant] personally in this situation." We review a district court's equitable determination on the disregard of the corporate form for abuse of discretion and the underlying factual findings for clear error. *Equity Trust Co. v. Cole*, 766 N.W.2d 334, 339 (Minn. App. 2009).

A district court's decision to pierce the corporate veil is, in essence, an equitable determination that depends on fundamental underlying unfairness. *Victoria Elevator*, 283

N.W.2d at 512. The district court's detailed order demonstrates that it understood and carefully considered the parties' respective positions. The district court not only failed to find fundamental unfairness to respondent, but determined that disregard of the corporate entity would be "exceedingly unfair" to appellant. On this record, we will not disturb the district court's determination and, accordingly, we conclude that the district court did not abuse its discretion in failing to pierce the corporate veil.

V

Also by related appeal, respondent challenges the district court's failure to include respondent's attorney fees when equitably apportioning the transferred funds. The parties do not contest that the terms of the Martin Holdings guaranties render HRI liable for attorney and collection fees.

District courts have "broad discretion" to fashion equitable remedies. *State ex rel. Swan Lake Area Wildlife Ass'n v. Nicollet Cnty. Bd. of Cnty. Comm'rs*, 799 N.W.2d 619, 625 (Minn. App. 2011) (citing *Nadeau v. Cnty. of Ramsey*, 277 N.W.2d 520, 524 (Minn. 1979)). We review equitable determinations for an abuse of discretion. *Sarpal*, 797 N.W.2d at 23. A district court abuses its discretion if "its decision is against the facts in the record" or if its "ruling is based on an erroneous view of the law." *Id.* at 24.

Nothing obligated the district court to include respondent's attorney fees in its equitable division between respondent and appellant. We have held that a district court's inherent equity powers afford leeway to "choos[e] the distribution method it [finds] to be most equitable." *Cmty. First Bank v. First United Funding, LLC*, 822 N.W.2d 306, 312 (Minn. App. 2012). The district court did not abuse its discretion.

Affirmed.