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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-785**

Tony Kromrey,
Respondent,

Dale Kromrey,
Respondent,

vs.

Asgher Ali d/b/a Asgher Jaweed,
and
Hyder Jaweed d/b/a Center Pointe Apartments,
Appellants.

**Filed February 15, 2011
Affirmed in part and reversed in part
Wright, Judge**

Ramsey County District Court
File No. 62-CV-09-9959

Tony Kromrey, New Brighton, Minnesota (pro se respondent)

Dale Kromrey, New Brighton, Minnesota (pro se respondent)

Kenneth Hertz, Hertz Law Office, Columbia Heights, Minnesota (for appellants)

Considered and decided by Wright, Presiding Judge; Larkin, Judge; and Crippen,
Judge.*

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

WRIGHT, Judge

In this dispute regarding an unpaid debt for maintenance work performed at an apartment complex, appellants argue that the district court erred by imposing personal liability for the debts of the partnership that owns the apartment complex because the district court's decision to pierce the corporate veil is not supported by the record. We affirm in part and reverse in part.

FACTS

Center Pointe Apartments (the property) is owned by Brooklyn Center Leased Housing Associates Limited Partnership. The partnership includes one general partner and two limited partners, each of which is a limited liability corporation. The general partner is Brooklyn Center Housing, LLC (BCH) in which appellant Hyder Jaweed is the sole member. His brother, appellant Asgher Ali, has no legal interest in BCH, the partnership, or the property.

Respondents Tony Kromrey and Dale Kromrey performed maintenance work on the property in 2007 and 2008 pursuant to an oral agreement with the property management company, Paramark Management. They were not paid for the work that they performed. Tony Kromrey testified that he believed that Ali and Jaweed were the owners of the property for several reasons. They directed Paramark regarding the property-management work to be performed at the property. And they were present at the property routinely and spoke directly with Tony Kromrey about the work that he was

hired to perform. Tony Kromrey found them listed online as the owners of the property, and they signed paychecks that he received for other work performed at the property.

Erick Sytsma, who managed the property before Paramark, testified that he worked for Ali and Jaweed, they signed his paychecks, and they often directed him to contact Tony Kromrey for various repair projects. Sytsma testified that there was never any question that Ali and Jaweed were the owners of the property and that they held themselves out as the owners of the property the entire time he worked for them.

The Kromreys filed separate claims in conciliation court against Ali and Jaweed and obtained judgments for the unpaid debt. Ali and Jaweed appealed, and the district court consolidated the two cases. Following a bench trial, the district court held that Ali and Jaweed are personally liable to Tony Kromrey and Dale Kromrey for the outstanding debts. The district court found that Ali and Jaweed held themselves out as the owners of the property and that the record supports piercing the corporate veil to hold Ali and Jaweed personally liable. This appeal followed.

D E C I S I O N

Jaweed and Ali argue that the record does not support the district court's decision to pierce the corporate veil to hold them personally liable for the debts of the partnership. Under Minnesota partnership law, "all general partners are liable jointly and severally for all obligations of the limited partnership" and "a general partner may be joined in an action against the limited partnership *or named in a separate action.*" Minn. Stat. §§ 321.0404(a), 321.0405(a) (2010) (emphasis added). Here, BCH is the sole general partner of the limited partnership that owns the property; thus, it is subject to liability. To

hold Jaweed and Ali personally liable, the district court pierced BCH's corporate veil. "Piercing the corporate veil is an equitable remedy that may be applied in order to avoid an injustice." *Equity Trust Co. Custodian ex rel. Eisenmenger IRA v. Cole*, 766 N.W.2d 334, 339 (Minn. App. 2009). We review a district court's exercise of its equitable powers for an abuse of discretion. *Id.* And we 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.*; *Equity Trust*, 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).

The decision to pierce the corporate veil and hold shareholders liable for the corporation's debts requires a number of these factors to be present. *Victoria Elevator*, 283 N.W.2d at 512. Although the record does not support the district court's finding that five of the eight *Victoria Elevator* factors are present in this case, the presence of several critical factors supports the district court's exercise of its equitable powers to pierce the corporate veil. For example, corporate formalities have not been observed, there were no functioning officers and directors, and the corporation was a mere façade for individual dealings.

The record establishes that Jaweed and Ali held themselves out as owners of the property; they were routinely present at the property, signed paychecks, directed the property managers regarding work to be performed at the property, and claimed ownership of the property. Jaweed and Ali often directed Sytsma to contact Tony Kromrey for various repairs; and Sytsma testified that, based on their statements and conduct, there was no question that Jaweed and Ali personally owned the property. Indeed, during the entire time Sytsma worked at the property, they held themselves out as the owners. The corporate names on Sytsma's paychecks frequently changed, and Jaweed paid employees from whichever corporate account he chose to use. Also on at least one occasion, Jaweed paid Sytsma personally in cash. Jaweed testified that he is the sole partner and member of BCH and presented an exhibit displaying the complex corporate structure. From this testimonial and documentary evidence regarding the

corporate structure and governance of BCH, there is no evidence of officer or director involvement other than Jaweed or the presence of any bylaws or other corporate formalities. When taken as a whole with deference to the fact-finder's credibility determinations, the record establishes, as the district court found, that Jaweed held himself out as the owner of the property, BCH was not observing corporate formalities, and the corporation was a mere façade for individual dealings. Thus, the first prong of the *Victoria Elevator* test has been satisfied.

To pierce the corporate veil there also must be an element of injustice or fundamental unfairness. *Id.* When the factors for piercing the corporate veil are present, “to allow an individual to escape liability because he does his business under a corporate form is to allow him an advantage he does not deserve.” *Id.* Here, the district court found, and the record supports, that the requisite element of fundamental unfairness is present. The district court aptly characterized the corporate structure as “a scheme of ownership” through layers of partnership and corporate entities that obstructs a creditor's ability to determine the property's true owner. Because piercing the corporate veil is necessary to avoid an injustice, the district court properly concluded that Jaweed is not entitled to protection from personal liability for the debts at issue here.

Ali argues that, even if the corporate veil is pierced, he should not be held personally liable because he owns no interest in the property, the partnership, or BCH. When piercing the corporate veil to hold an individual liable, “whether a party holds an ownership interest in the entity is not dispositive.” *Equity Trust*, 766 N.W.2d at 339. In *Equity Trust*, we held nonshareholder defendants liable because the record contained

substantial evidence that the nonshareholders “were personally involved in the ownership, management, and operation of the entities.” *Id.* at 340. But as to Ali, such evidence is not present here. In contrast to his brother’s 100-percent interest in BCH, Ali holds no ownership or management interest in BCH or the partnership. Rather, the record reflects that Ali helped his brother in a supporting role without a direct relationship to the property, BCH, or the partnership. The record does not indicate that Ali benefited personally from the business’s operation as a corporate facade. Because we do not glean from the record before us sufficient evidence to support the district court’s decision to hold Ali, a nonshareholder, personally liable, this aspect of the district court’s decision constitutes an abuse of discretion. Accordingly, we affirm the judgment as to Jaweed and reverse as to Ali.

Affirmed in part and reversed in part.