STATE OF MINNESOTA

IN SUPREME COURT

A18-0100

Court of Appeals McKeig, J.

Aaron Carlson Corporation,

Appellant,

vs. Filed: September 11, 2019
Office of Appellate Courts

Neal Cohen, Darren Chaffee, CoBe Equities, L.L.C. a/k/a CoBe Capital, L.L.C.,

Respondents.

Brandon M. Schwartz, Michael D. Schwartz, Schwartz Law Firm, Oakdale, Minnesota, for appellant.

Terrance J. Wagener, Messerli & Kramer P.A., Minneapolis, Minnesota, for respondents.

S Y L L A B U S

1. Because the receivership statutes, Minn. Stat. §§ 576.21–.53 (2018), do not provide authority for a receiver to bring claims that do not "relate to" receivership property, a receiver may not bring claims to pierce the corporate veil against shareholders of the corporation whose assets the receiver controls if the district court does not grant such authority.

2. When a receiver may not bring a veil-piercing claim in the receivership action, a subsequent action to recover damages under a veil-piercing theory is not barred by the doctrines of collateral attack or res judicata.

Reversed and remanded.

O P I N I O N

MCKEIG, Justice.

This appeal presents a question of first impression: whether a receiver may bring a piercing-the-corporate-veil claim against the shareholders of the corporate entity that the receiver controls. Appellant Aaron Carlson Corporation, one of about 160 creditors of the now-defunct LSI Corporation of America, Inc. (LSI), seeks to pierce the LSI corporate veil and recover from respondents Neil Cohen, Darren Chaffee, and CoBe Equities, L.L.C. The district court and court of appeals concluded that these claims should have been brought by a receiver that had been appointed in a lawsuit that respondents had filed against LSI, in which the receiver sold LSI's assets and repaid some of LSI's creditors. In this appeal, Aaron Carlson Corp. argues that the court of appeals erred in affirming the district court because the receiver did not have the power to bring veil-piercing claims, and thus, its claims against the shareholders do not represent an impermissible collateral attack on the receivership and are not barred by res judicata. We agree and, therefore, reverse the court of appeals and remand to the district court for further proceedings consistent with this opinion.

FACTS

This dispute began with the dissolution of LSI, a Minnesota-based subsidiary of HNI Corporation that designed and manufactured laminate casework. Cohen and Chaffee, acting through a series of corporations and finance companies, came to possess millions of dollars of LSI's debt. Cohen and Chaffee own LSI Holdings, which bought LSI in 2013. After purchasing LSI through LSI Holdings, Cohen and Chaffee personally provided "support collateral" for LSI to take out additional loans, but they did not put any equity into LSI directly. Cohen owns CoBe Capital, which is a limited liability company and holding company with shares in only one company: CoBe Management. LSI paid management fees to CoBe Management during 2013 and 2014. Cohen is a "manager" of CoBe Management. Chaffee and Cohen assisted with decision-making at LSI. And CoBe Management and Chaffee helped arrange financing for LSI. Chaffee and Cohen, through another company (Cocha Finance, LLC), purchased those loans from the financer in October 2015.

Chaffee and Cohen maintain that they eventually came to the conclusion that LSI would not be profitable and became concerned about preserving the collateral on the loans. On January 15, 2016, Cohen and Chaffee sued LSI in Hennepin County District Court, alleging that it owed them $5,044,797.54. That same day, the parties stipulated to the appointment of a receiver, and the district court ordered such appointment. Aaron Carlson Corp. received a copy of the appointment order via email from LSI's counsel in Aaron Carlson Corp.'s separate suit against LSI (discussed below) in January 2016. About three months later, Aaron Carlson Corp. moved to intervene in the receivership action and to

enjoin the receivership appointment. The district court denied that motion, in part because Aaron Carlson Corp. was an unsecured creditor of LSI and therefore did not have the power to prevent the appointment of a receiver. The district court also found that Aaron Carlson Corp.'s interests would be "adequately represented by the receiver." The receiver sold all of LSI's assets, then filed its final report on April 8, 2016, and the district court approved that report and terminated the receivership on May 6, 2016. Aaron Carlson Corp. did not appeal from any of the district court's decisions or orders in the receivership action.

In 2013, LSI and Aaron Carlson Corp. contracted for Aaron Carlson Corp. to do work for LSI on a medical center. Allegedly, Aaron Carlson Corp. fully performed on the contract, but LSI cancelled it without making payment. On July 22, 2015, Aaron Carlson Corp. sued LSI in Hennepin County District Court, asserting breach of contract claims. The district court stayed this case during the pendency of the Cohen-LSI receivership action.[1] Aaron Carlson Corp. subsequently filed a motion to amend its complaint to add veil-piercing claims against respondents; the motion was denied. In denying the motion, the district court noted that, upon the expected default judgment, "[Aaron Carlson Corp.] may in a separate lawsuit sue these named putative defendants and attempt to pierce the corporate veil with the evidence they have proffered to this Court for this motion." LSI did not respond to Aaron Carlson Corp.'s discovery requests or motion for summary judgment, and judgment of $444,646.48 was entered on October 21, 2016.

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[1] Though not relevant to the analysis of this matter, Cohen and Chaffee's case and Aaron Carlson Corp.'s case were heard by different district court judges.

On January 17, 2017, Aaron Carlson Corp. filed the complaint in this case, alleging insufficient capitalization for LSI, a failure to observe corporate formalities, and that Cohen, Chaffee, and CoBe "exercised complete domination of LSI in respect to the transactions by and between LSI and [Aaron Carlson Corp.]" and knew of LSI's insolvency at the time of the Aaron Carlson Corp. transactions. Ultimately, Aaron Carlson Corp. alleged that Cohen and Chaffee treated the corporation as an alter ego and requested that the district court pierce the corporate veil and hold Cohen, Chaffee, and CoBe liable for LSI's debts to Aaron Carlson Corp.

The district court granted summary judgment to Cohen, Chaffee, and CoBe on the grounds that Aaron Carlson Corp.'s claim was an impermissible collateral attack on the district court's order in the receivership action, and that the claim was barred by the doctrine of res judicata. The court of appeals affirmed in a published decision. *Aaron Carlson Corp. v. Cohen*, 919 N.W.2d 831 (Minn. App. 2018). It concluded that "the district court did not err by concluding that the receiver had the power to assert [Aaron Carlson Corp.'s] veil-piercing claim." *Id.* at 837. Because the veil-piercing claim could have been brought in the receivership action, the court of appeals reasoned, Aaron Carlson Corp. was barred from bringing it in this subsequent action by the doctrine of impermissible collateral attacks. *Id.* at 840. The court of appeals did not address whether the action was barred by res judicata. *Id.* We granted review on the question of the limits of a general receiver's powers.

ANALYSIS

"When reviewing a grant of summary judgment, we review the record to determine: (1) whether there are any genuine issues of material fact for trial; and (2) whether the trial court erred in its application of the law." *Hoyt Props., Inc. v. Prod. Res. Grp., L.L.C.*, 736 N.W.2d 313, 317 (Minn. 2007) (citation omitted) (internal quotation marks omitted). In this case, the parties do not dispute any material facts relating to the reasons that summary judgment was granted. The parties present questions of law which we review de novo. *Laymon v. Minn. Premier Props., LLC*, 913 N.W.2d 449, 452 (Minn. 2018).

This case requires us to decide, first, whether a receiver may bring a piercing-the-corporate-veil claim against shareholders of the corporation in receivership. Second, we must determine whether Aaron Carlson Corp.'s claims are barred by the doctrines of collateral attack or res judicata. We address each issue in turn.

I.

Many sources of authority define the powers and duties of receivers. In general, those powers and duties stem from Minn. Stat. §§ 576.21–.53 (2018); this court's case law; and the order appointing the receiver. *See* Minn. Stat. § 576.29. Receiverships have been part of the judicial system for centuries, with the power to appoint a receiver coming from a court's "general equity powers." *Asleson v. Allison*, 247 N.W. 579, 580 (Minn. 1933). We will first describe the principles of receiverships. Then, we turn to the question of whether the receiver in this case had the power to pierce the corporate veil against respondents.

A.

We begin with a description of the background on the law of receiverships. A "receiver" is "a person appointed by the court as the court's agent, and subject to the court's direction, to take possession of, manage, and, if authorized by this chapter or order of the court, dispose of receivership property." Minn. Stat. § 576.21(p). "[T]he purpose of a receivership is to preserve the property which is the subject of the litigation and to provide full protection to the parties' rights to the property until a final disposition of the issues . . . ." 75 C.J.S. *Receivers* § 4 (2019). "The appointment of a receiver is made by a court of equity, and its purpose is to accomplish, as far as practicable, complete justice for the parties before it. . . . A receiver is not to be appointed when the moving party has an adequate remedy at law." *Asleson*, 247 N.W. at 580.

A receiver may be appointed by the court when a corporation is in danger of insolvency or is insolvent. Minn. Stat. § 576.25, subd. 4. Receivers' duties are determined by "statute, rule, or order of the court." Minn. Stat. § 576.29, subd. 2. Unless specifically limited by statute, a "court may modify the powers and duties of a receiver." Minn. Stat. § 576.29, subd. 3. Receivers have the power to exercise control over the receivership property, to "incur and pay expenses" in the course of performing their duties, to "assert rights, claims, causes of action, or defenses that relate to receivership property," and to request and receive instruction from the court on "any matter." Minn. Stat. § 576.29, subd. 1(a). A receiver also has the power to:

> (i) assert, or when authorized by the court, to release, any rights, claims, causes of action, or defenses of the respondent to the extent any rights, claims, causes of action, or defenses are receivership property; (ii) maintain

> in the receiver's name or in the name of the respondent any action to enforce any right, claim, cause of action, or defense; and (iii) intervene in actions in which the respondent is a party for the purpose of exercising the powers under this clause or requesting transfer of venue of the action to the court.

Minn. Stat. § 576.29, subd. 1(b)(1). And a receiver may "pursue any claim or remedy that may be asserted by a creditor of the respondent under [the Uniform Voidable Transactions Act] sections 513.41 to 513.51." Minn. Stat. § 576.29, subd. 1(b)(2).

B.

Analyzing the plain language of the statute and the receiver-appointment order, as well as case law, the court of appeals determined that the receiver had the power to bring a veil-piercing claim. *Aaron Carlson Corp.*, 919 N.W.2d at 837. It reasoned that "[Aaron Carlson Corp.] sought to recover money owed to it under its judgment against LSI" and "therefore sought to satisfy LSI's debt through the distribution of 'receivership property' . . . ." *Id.*

Aaron Carlson Corp. argues that this was error because its piercing-the-veil claim falls outside the scope of authority conferred by the district court's appointment order, the statute, and our precedent. We agree.

The district court appointed BGA Management, LLC d/b/a Alliance Management, as a general receiver over LSI on January 15, 2016. The appointment order granted the receiver "all of the powers and duties of a general receiver set forth in Minn. Stat. § 576.29," authorizing "any and all acts respecting the assets, management, and operations of" LSI, and giving control of LSI and its assets to the receiver. Further, the district court ordered:

> The Receiver shall have all of the powers and all of the authority usually held by receivers under Minnesota law and reasonably necessary to operate [LSI] and conduct [LSI's] business, including, but not limited to, the following:
>
> . . . .
>
> j. Investigate, pursue, and compromise and settle any and all claims that [LSI], or the Receiver in its capacity as Receiver over [LSI], may have against any third party, including [LSI's] insiders, directors, officers and owners, and including fraudulent transfer claim[s], unjust enrichment claims and illegal distribution claims or other similar improper transactions . . . .

Although the receiver was expressly entitled to request instruction from the court if it was uncertain about its powers, the court directed that the order "should be broadly construed to provide the Receiver with the power and authority necessary and appropriate to fulfill its duties as set forth herein and under applicable law."

Because the district court granted the receiver all of the powers authorized by the statute, we begin our analysis there. We review issues of statutory interpretation de novo. *Laymon*, 913 N.W.2d at 452. The goal of statutory interpretation is to discern the Legislature's intent. *Swanson v. Brewster*, 784 N.W.2d 264, 274 (Minn. 2010). We first decide whether the statute's plain meaning is clear and unambiguous. *Id.* If the statute is unambiguous, then we give effect to the plain meaning. *Id.* Neither party argues that the statute is ambiguous and we agree.

The parties agree that the district court appointed a "general receiver." A "general receivership" is "a receivership over all or substantially all of the nonexempt property of a respondent for the purpose of liquidation and distribution to creditors and other parties in interest . . . ." Minn. Stat. § 576.21(h). The statute empowers the receiver to "assert . . . claims . . . that relate to receivership property." Minn. Stat. § 576.29,

subd. 1(a)(3). "Receivership property" in a general receivership is defined as "all or substantially all of the nonexempt property of the respondent."[2] Minn. Stat. § 576.21(r)(1). Thus, if a veil-piercing claim against insiders of LSI "relates to" LSI's property, then the receiver had the power to bring such a suit. Aaron Carlson Corp. argues that its veil-piercing claims do not "relate to" LSI's property because it seeks only to recover Cohen and Chaffee's property. We agree.

Piercing the corporate veil is an equitable remedy that is intended to avoid injustice. It is "generally a creditor's remedy used to reach an individual who has used a corporation as an instrument to defraud creditors." *Roepke v. W. Nat. Mut. Ins. Co.*, 302 N.W.2d 350, 352 (Minn. 1981). A judicial decision on whether an individual has used a corporation to defraud creditors is based on function over form. *Hoyt Props., Inc. v. Prod. Res. Grp., L.L.C.*, 736 N.W.2d 313, 318–19 (Minn. 2007). The factors relevant to this decision include "insufficient capitalization for purposes of corporate undertaking, failure to observe corporate formalities, nonpayment of dividends, insolvency of debtor corporation at time of transaction in question, siphoning of funds by dominant shareholder, nonfunctioning of other officers and directors, absence of corporate records, and existence of corporation as merely facade for individual dealings." *Victoria Elevator Co. v. Meriden Grain Co.*, 283 N.W.2d 509, 512 (Minn. 1979). Specifically, Aaron Carlson Corp. alleges

[2] A "limited receivership," on the other hand, is "a receivership other than a general receivership," and receivership property in a "limited receivership" is "that property of the respondent identified in the order appointing the receiver, or in any subsequent order." Minn. Stat. § 576.21(k), (r)(2).

that Cohen and Chaffee failed to exercise corporate formalities, insufficiently capitalized the corporation, "exercised complete domination of LSI in respect to the transactions by and between LSI and Aaron Carlson Corp." and knew of LSI's insolvency at the time of the Aaron Carlson Corp. transactions.

We conclude that Aaron Carlson Corp.'s claims do not "relate to" receivership property for two reasons. First, Aaron Carlson Corp.'s claims are those that LSI could not have brought itself. Aaron Carlson Corp.'s veil-piercing claim is a creditors' remedy that does not include LSI as a party, either as a defendant or plaintiff. Second, the veil-piercing claims seek to recover property that has always belonged to Cohen and Chaffee. The purpose of the receiver in this case was to control, liquidate, and distribute respondent LSI's property to creditors. Minn. Stat. §§ 576.21(h), (p). Even though the veil-piercing claim "relates to" the existence of the corporate entity itself, it does not pursue property that ever belonged to LSI. Expecting the receiver to bring a claim that neither belongs to LSI nor seeks to recover LSI property would stretch the statutory phrase "relating to receivership property" too far.

Respondents and the court of appeals cite one of our cases to assert that "a receiver 'succeeds to the rights of the creditors as well as of the insolvent corporation, and has the power to enforce the rights which the creditors, but for the proceedings, might have enforced on their own behalf.' " *Aaron Carlson Corp.*, 919 N.W.2d at 837 (quoting *Minn. Thresher Mfg. Co. v. Langdon*, 46 N.W. 310, 311 (1890)). In *Thresher Manufacturing*, we determined that receivers could bring claims on behalf of creditors of insolvent corporations in that context. 46 N.W. at 311. "Among the rights which pass to the receiver

as the representative of the creditors is the right to recover property conveyed by the corporation in fraud of its creditors . . . ." *Id.* *Thresher Manufacturing* does not discuss veil-piercing claims or the receivership statute; it only discusses the role of receivers in the context of fraudulent conveyances. Similarly, the statute provides that receivers may bring claims on behalf of creditors under the Uniform Voidable Transactions Act. Minn. Stat. § 576.29, subd. 1(b)(2). Voidable transactions, also known as fraudulent transfers, involve property that once belonged to the corporation but was fraudulently or improperly transferred. *See generally* Minn. Stat. § 513.44–.45 (2018). Claims to recover such property are "related to" the receivership property because the fraudulently transferred property would have been part of the receivership property in the absence of the improper transfer. We decline to read *Thresher Manufacturing* to extend beyond the claims that it discussed, especially in light of the receivership statute's limitation on claims that a receiver may pursue.

Only one subsection of the statute grants a receiver power to pursue claims without limiting that power to certain types of claims. Minnesota Statutes § 576.29, subd. 1(b)(1) empowers the receiver to "maintain" a cause of action or suit. Maintain means "to keep in an existing state," "to sustain against opposition," or "to continue or persevere in." *Merriam-Webster's Collegiate Dictionary* 700 (10th ed. 1993). The use of the word "maintain" indicates that a receiver's unrestricted power to participate in cases or causes of action is limited to cases that were already pending, unless the case "relates to receivership property." Here, the veil-piercing claim was not initiated until after the receivership ended, so there was no such claim for the receiver to "maintain."

Respondents argue that allowing veil-piercing claims to be brought by someone other than a receiver "would constrain a receiver from reaching 'receivership property' that has been siphoned or misappropriated from the defunct entity to its purported 'alter ego' shareholders or officers." We disagree. Our interpretation of the statute would not bar a receiver from pursuing claims that "relate to" receivership property. *See, e.g.*, *Bartholomew v. Avalon Capital Grp., Inc.*, 828 F. Supp. 2d 1019, 1024, 1026–27 (D. Minn. 2009) (relying on *Thresher Manufacturing* to hold that a receiver was able to pursue a fraudulent transfer claim against insiders and third-parties to a similar insolvent corporation receivership action). Aaron Carlson Corp.'s veil-piercing claims simply do not "relate to" such property.

Respondents further argue that the "broad 'alter ego' allegations [that Aaron Carlson Corp.] makes against Respondents could have been made by any of the 160 creditors identified by the Receiver." They conclude that because the receivership action is intended to "accomplish . . . complete justice for the parties before [the court]," it would be unjust and inefficient to permit creditors to bring new claims that are similar to the claims brought in the receivership action. *Asleson*, 247 N.W. at 580. But, under the plain language of the statute, the goals of a receivership action do not include pursuing property to which the respondent corporation has no claim. Minn. Stat. § 576.21(h) (defining a general receivership as "a receivership over all or substantially all of the nonexempt property of a respondent for the purpose of liquidation and distribution to creditors and other parties in interest . . . ."). Ultimately, Aaron Carlson Corp.'s veil-piercing claims have no connection to LSI's property and therefore are not "related to receivership property."

For these reasons, we hold that the receiver did not have the power to bring a veil-piercing claim because, even though the receiver may bring some claims that belong to creditors, Aaron Carlson Corp.'s attempt to pierce the corporate veil is not sufficiently "related to receivership property."

II.

Having determined that the veil-piercing claims in this case could not have been brought by the receiver, we turn to the question of whether Aaron Carlson Corp.'s claims are barred as an impermissible collateral attack or by res judicata. We hold that they are not barred.

A.

A collateral attack is "[a]n attack on a judgment in a proceeding other than a direct appeal." *Collateral Attack*, *Black's Law Dictionary* (10th ed. 2014); *see, e.g.*, *Wold v. People's Tr. & Savings Bank*, 229 N.W. 785 (Minn. 1930) (distinguishing between a direct attack on an order and a collateral attack). Where a direct attack on a judgment "attempt[s] to annul, amend, reverse, or vacate a judgment or to declare it void in an appropriate proceeding instituted initially and primarily for that purpose," an impermissible collateral attack similarly attacks the validity of a judgment, but the attack "is purely secondary or incidental." *Stumer v. Hibbing Gen. Hosp.*, 65 N.W.2d 609, 612 (Minn. 1954). Because Aaron Carlson Corp.'s claims against respondents do not "attack" the order in the receivership proceeding either primarily or incidentally, we hold that bringing them in a separate proceeding is not a collateral attack on the receivership order.

Respondents argue that, because the district court approved the receiver's finding that Cohen and Chaffee were secured creditors of LSI, piercing the corporate veil would show that they were not legitimate creditors. As discussed above, however, the receiver was not able to bring a veil-piercing claim against respondents, and therefore, the issues before the district court did not implicate the question of the propriety of LSI's corporate form. Further, contrary to respondents' assertions, the district court did not make any specific findings about Cohen and Chaffee's "good faith" or that their transactions were made at "arms-length." Thus, were a court to hold that Cohen and Chaffee abused the corporate form here, it would not "annul, amend, reverse, or vacate [the receivership judgment] or . . . declare it void." *Id.* The district court order approving the receiver's report provides evidence of the distinct nature of Aaron Carlson Corp.'s claims. It "barred [all parties] from asserting . . . claims, rights or interests against any [receivership] assets, the Company or the Receiver." Nowhere in the order did it bar claims against respondents or their property.

Respondents also argue that *Wold* applies and bars this claim. 229 N.W. 785. In that case, a probate court's approval of financial transactions connected to a guardianship was held to be not open to collateral attack. *Id.* at 786. As Aaron Carlson Corp. points out, though, the guardian in *Wold* had petitioned the probate court to approve its actions, and the plaintiff later attacked those same actions in a subsequent proceeding. *Id.* The probate court had approved by order each transaction that the plaintiff sought to undo, but the plaintiff had not appealed from that order. *Id.* at 786–87. Here, by contrast, the transactions approved by the district court in the receivership action are distinct from the acts that Aaron

Carlson Corp. alleges support its claim of misuse of the corporate form. Thus, *Wold* does not apply.

Because Aaron Carlson Corp.'s suit here is not a "proceeding in which the integrity of the [receivership] judgment is challenged," it is not barred as an impermissible collateral attack. *In re Wretlind*, 32 N.W.2d 161, 168 (Minn. 1948) (citation omitted) (internal quotation marks omitted).

B.

The doctrine of res judicata prevents either party in an action "from relitigating claims arising from the original circumstances, even under new legal theories." *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004). In order to apply res judicata, a court must find that four conditions exist: "(1) the earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the same parties or their privies; (3) there was a final judgment on the merits; (4) the estopped party had a full and fair opportunity to litigate the matter." *Id.* at 840. The doctrine is not limited to issues actually litigated in the prior proceeding, but may be applied to any claim that could have been litigated. *Hauser v. Mealey*, 263 N.W.2d 803, 807 (Minn. 1978).

We conclude that the receiver could not have brought an action to pierce the corporate veil against respondents in the receivership action. Because Aaron Carlson Corp.'s claims could not have been brought in the earlier suit, the fourth condition is not met, and Aaron Carlson Corp.'s claims are not barred by the doctrine of res judicata.

CONCLUSION

For the foregoing reasons, we reverse the decision of the court of appeals and remand to the district court for further proceedings on Aaron Carlson Corporation's veil-piercing claims.

Reversed and remanded.