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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA19-588

Filed: 21 July 2020

Guilford County, No. 17 CVS 9515

DACAT, INC., AND VIET GROUP INVESTMENTS, LLC, Plaintiffs,

v.

JONES LEGACY TRANSPORTATION, LLC, AND VICTOR A. JONES, Defendants.

Appeal by Plaintiffs from judgment entered 25 February 2019 by Judge Andrew H. Hanford in Guilford County Superior Court. Heard in the Court of Appeals 13 November 2019.

Pinto Coates Kyre & Bowers, PLLC, by Jon Ward and Adam L. White, for plaintiffs-appellants.

Roberson Haworth & Reese P.L.L.C., by Christopher C. Finan and Shane T. Stutts, for defendants-appellees.

MURPHY, Judge.

When a limited liability company (“LLC”) breaches a contract but was not created for the sole purpose of entering the agreement, a trial court does not err in refusing to disregard the corporate form to hold members of the LLC individually liable for the breach of contract.

BACKGROUND

Defendant Victor A. Jones (“Jones”) formed Defendant Jones Legacy Transportation, LLC (“JLT”) in 2014. Jones was the sole organizer, owner, member, manager, and employee of JLT for the entirety of its existence. JLT provided dump truck rental, hauling, and related services, such as disposing of the waste and debris in dumpsters. JLT served commercial businesses, residential customers, and construction sites. To fulfill some orders, JLT contracted with various dump truck providers.

In 2015, JLT orally contracted with dump truck providers Dacat, Inc. and Viet Group Investments, LLC (“Plaintiffs”) to perform various services, including disposing of the waste and debris from dumpsters. The contract required Plaintiffs to submit invoices to JLT for work performed, and JLT to pay Plaintiffs according to those invoices. Plaintiffs performed work according to the agreement, submitted corresponding invoices to JLT, and JLT initially paid Plaintiffs; however, JLT eventually refused to pay Plaintiffs for their work. In his capacity as sole manager within JLT, Jones decided whether to pay Plaintiffs. When JLT refused to pay Plaintiffs, they sued JLT and Jones individually.

JLT’s registered office was Jones’s home, and its registered phone number was Jones’s cell phone. In his deposition testimony, Jones referred to himself and JLT interchangeably. For example:

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Q: What else did [JLT] do?

A: Well, I had to, you know, do the invoicing to these companies[.] . . . I would make sure they trained[.] . . . I would try to track down, you know, if a ticket was missing, because I can't invoice if I don't have a ticket[.] . . . I had to go out and find”

The trial court held JLT liable to the Plaintiffs for breach of contract, that JLT was indebted in the following amounts—\$36,069.85 to Plaintiff Dacat, Inc., and \$20,651.60 to Plaintiff Viet Group Investments, LLC. The trial court ordered JLT to pay those amounts to the respective Plaintiffs. However, the trial court concluded that Plaintiffs “failed to provide sufficient credible evidence from which this Court can conclude that [Jones] has failed to conduct his business as an LLC,” and dismissed with prejudice Plaintiffs’ claim against Jones to pierce JLT and hold him personally liable. Plaintiffs timely appealed the trial court’s judgment holding only JLT liable and preventing the piercing of JLT to hold Jones personally liable.

ANALYSIS

The standard of review on appeal from a non-jury trial is ‘whether there was competent evidence to support the trial court's findings of fact and whether its conclusions of law were proper in light of such facts.’ Where the trial court sits without a jury, its findings of fact ‘have the force and effect of a jury verdict and are conclusive on appeal if there is evidence to support those findings.’ However, we review the trial court's conclusions of law de novo.

East Mkt. St. Square, Inc. v. Tycorp Pizza IV, Inc., 175 N.C. App. 628, 632, 625 S.E.2d 191, 196 (2006) (citations omitted) (quoting *Shear v. Stevens Building Co.*, 107 N.C. App. 154, 160, 418 S.E.2d 841, 845 (1992)).

A. Instrumentality Rule

Plaintiffs argue that “the trial court erred in not disregarding JLT to reach Jones,” because the three elements of the instrumentality rule were met, justifying piercing the corporate veil to hold Jones liable for breach of contract. Accordingly, we examine the instrumentality rule in relation to this appeal.

“[I]n the ordinary course of business, a corporation is treated as distinct from its shareholders.” *State ex rel. Cooper v. Ridgeway Brands Mfg., LLC*, 362 N.C. 431, 438, 666 S.E.2d 107, 112 (2008). However, the corporate form may be disregarded as a “drastic remedy . . . invoked only in an extreme case where necessary to serve the ends of justice.” *Dorton v. Dorton*, 77 N.C. App. 667, 672, 336 S.E.2d 415, 419 (1985); *see also Henderson v. Sec. Mortg. & Fin. Co., Inc.*, 273 N.C. 253, 260, 160 S.E.2d 39, 44 (1968) (holding that the corporate form may be disregarded, and the corporation and the shareholder treated as the same entity, if “the corporation is so operated that it is a mere instrumentality or *alter ego* of the sole or dominant shareholder and a shield for his activities in violation of the declared public policy or statute of the State . . .”).

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“In North Carolina, what has been commonly referred to as the ‘instrumentality rule,’ forms the basis for disregarding the corporate entity or ‘piercing the corporate veil.’” *Glenn v. Wagner*, 313 N.C. 450, 454, 329 S.E.2d 326, 330 (1985). The instrumentality rule concerning piercing the corporate veil applies to limited liability companies, not just corporations. *Estate of Hurst ex rel. Cherry v. Moorehead I, LLC*, 228 N.C. App. 571, 576-77, 748 S.E.2d 568, 573–74 (2013) (noting that “a member of a limited liability company, like shareholders and directors of corporations, may be held individually liable for the company’s obligations through the doctrine of piercing the corporate veil” before introducing and analyzing the instrumentality rule elements as to an LLC). There are three elements of a successful instrumentality rule claim:

- (1) Control, not mere majority or complete stock control, but complete domination, not only of finances, but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; and
- (2) Such control must have been used by the defendant to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or a dishonest and unjust act in contravention of plaintiff's legal rights; and
- (3) The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

Glenn, 313 N.C. at 454-55, 329 S.E.2d at 330. The most important instrumentality rule element relating to this appeal is the second, and our analysis is limited to that element as it relates to breaches of contract.

B. Application to Breach of Contract Cases

While also presenting arguments concerning the other instrumentality rule elements, Plaintiffs argue that the trial court erred in finding that “Jones[’s] control over [JLT] . . . was not used to commit wrong or fraud, to perpetrate the violation of some legal duty, or a dishonest and unjust act in contravention of another party’s legal rights as it was a result of a dispute over money owed.” In support of their argument, Plaintiffs cite *East Mkt. St. Square* to argue that breaching a contract is the violation of a “positive legal duty,” meeting the second element of the instrumentality rule.

In *East Mkt. St. Square*, when discussing the instrumentality rule’s second element and breaches of contract, we held that “we consider performance under a contract to be a ‘positive legal duty,’ the violation of which constitutes a clear ‘wrong’ done to plaintiffs.” *East Mkt. St. Square*, 175 N.C. App. at 638, 625 S.E.2d at 199. However, Plaintiffs’ characterization of our holding in *East Mkt. St. Square* is an incomplete perspective on our caselaw concerning whether breaches of contract constitute fraud or wrong, the violation of a positive legal duty, or a dishonest and unjust act that meets the instrumentality rule’s second element.

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In *Best Cartage, Inc. v. Stonewall Packaging, LLC*, we clarified the extent of the holding in *East Mkt. St. Square* as follows:

Plaintiff also contends that [individual defendant's] breach of the Agreement, in itself, can amount to a wrongdoing to meet the second element of the test. Plaintiff cites to [*East Mkt. St. Square*], where an individual defendant *created a corporation for the sole purpose of entering the contract at issue* and at the same time *unjustly insulating* the defendant from liability under the contract. [*East Mkt. St. Square*] appears to differ from the case at hand in that there the breach of contract related to the *creation of the shell corporation* and *unjustly insulated* the controlling entity from any liability.

Here, alternatively, it does not appear, and plaintiff has not alleged, that [individual defendant] created [the company] *for the sole purpose of entering the Agreement*; and it does not appear that the creation of [the company] somehow unjustly insulates [individual defendant] from any liability. Consequently, we must hold that plaintiff failed to sufficiently allege a wrongdoing to meet the second prong of the instrumentality test for piercing the corporate veil, and as a result, the trial court did not err in dismissing plaintiff's claim for piercing the corporate veil pursuant to [individual defendant's] Rule 12(b)(6) motion. Furthermore, we see no need to address the other elements of the test as this particular requirement is dispositive.

Best Cartage, Inc. v. Stonewall Packaging, LLC, 219 N.C. App. 429, 440, 727 S.E.2d 291, 300-01 (2012) (emphasis added) (citations omitted) (paragraph break inserted for ease of reading). Without a finding that Jones created JLT for the sole purpose of entering the oral contract with Plaintiffs, unjustly insulating himself from contractual liability via the creation of a shell corporation, “we must hold that

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[Plaintiffs] failed to sufficiently allege a wrongdoing to meet the second prong of the instrumentality test for piercing the corporate veil, and as a result, the trial court did not err” in refusing to pierce JLT to hold Jones personally liable. *Best Cartage*, 219 N.C. App. at 440, 727 S.E.2d at 301.

Here, the trial court made the following unchallenged Findings of Fact:

5. That [JLT] hired and contracted with various providers of dump trucks to dispose of waste and debris from dumpsters and other related services.
6. That during 2015, [JLT] through [Jones] hired and contracted with both [Plaintiffs] to have [Plaintiffs] dispose of waste and debris from dumpsters and to perform other related services on behalf of [JLT].
9. . . . Defendants failed to pay Plaintiffs for work that they performed.
10. That there is no dispute a valid oral contract existed between all parties.

As these findings are not challenged by Plaintiffs, they are binding on appeal. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). Additionally, evidence shows Jones founded JLT in 2014. JLT’s creation one year before hiring Plaintiffs, and its contractual relationship with “various providers of dump trucks,” shows that JLT was not created for the sole purpose of entering the valid contract with Plaintiffs. These findings independently support the trial court’s Conclusion of Law 6 that “Plaintiffs . . . failed to provide sufficient credible evidence from which this Court can conclude that [Jones] has failed to conduct his business as an LLC,” as

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well as its adjudication that “Plaintiff[s] claim that [Jones] should be held personally liable for the acts of [JLT] . . . is hereby dismissed with prejudice.”

Conclusion of Law 6 and the trial court’s dismissal of Plaintiffs’ attempt to pierce the corporate veil to hold Jones personally liable were supported by unchallenged Findings of Fact 5, 6, 9, and 10, and the unchallenged, competent evidence that JLT was created in 2014. The trial court did not err in finding Plaintiffs did not meet their burdens in establishing the second element of the instrumentality rule. *Best Cartage*, 219 N.C. App. at 440, 727 S.E.2d at 300-01; *see also Glenn*, 313 N.C. at 454-55, 329 S.E.2d at 330. No evidence shows that the sole purpose of JLT’s creation in 2014 was to enter into the contract with Plaintiffs in 2015, and Plaintiffs make no such claim.

Accordingly, we hold the trial court did not err in concluding that JLT’s breach of contract did not meet the instrumentality rule’s second element, as it did not constitute the violation of a legal duty allowing the corporate entity to be disregarded. As in *Best Cartage*, “we see no need to address the other elements of the test as this particular requirement is dispositive.” *Best Cartage*, 219 N.C. App. at 440, 727 S.E.2d at 301.

CONCLUSION

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As Jones's purpose for forming JLT was not solely to enter into the agreement with Plaintiffs, the trial court did not err in finding that JLT's corporate veil should not be pierced for JLT's breach of contract.

AFFIRMED.

Judges STROUD and BROOK concur.

Report per Rule 30(e).