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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-811

No. COA22-465

Filed 6 December 2022

Mecklenburg County, No. 19CVS6468

BRIAN P. SISSON (individually); LAKE NORMAN SPORTING ARMS AND RANGE, INC. d/b/a THE RANGE AT LAKE NORMAN, d/b/a PINEVILLE GUN SHOP, Plaintiffs,

v.

ROBERT E. WATSON, Defendant.

Appeal by Plaintiffs from orders entered November 2020 by Judge George C. Bell and 13 December 2021 by Judge Karen Eady-Williams in Mecklenburg County Superior Court. Heard in the Court of Appeals 19 October 2022.

*Sisson Law Firm, PLLC, by Kevin M. Sisson, for the Plaintiff-Appellant.*

*The Echols Firm, LLC, by David A. Grassi, Jr. for the Defendant-Appellee.*

DILLON, Judge.

¶ 1 Plaintiff Brian Sisson appeals from an order granting Defendant Robert Watson's motion to dismiss pursuant to Rule 12(b)(6) and from an order denying partial summary judgment. We vacate in part, dismiss in part, and remand for further proceedings.

I. Background

¶ 2 In 2017, Plaintiff began negotiations with Defendant to purchase a gun range and firearms retail store. Throughout the process, Defendant represented himself as an owner of the store with authority to negotiate on behalf of the business.

¶ 3 Unbeknownst to Plaintiff at the time, the store was in default on 2 notes with its bank (“FNB”), totaling more than \$3 million. Plaintiff states that Defendant never informed him of this fact.

¶ 4 In May 2018, Plaintiff terminated the Agreement, based on his discovery during due diligence that Defendant had misrepresented the revenue/financial condition and other facts regarding the store.

¶ 5 After terminating the Agreement, the social media accounts of the store posted various defamatory statements about Plaintiff and his other business endeavors. Plaintiff alleges that Defendant was responsible for some or all these posts.

¶ 6 Plaintiff brought this action against Defendant seeking actual and punitive damages, alleging fraudulent misrepresentation, negligent misrepresentation, unfair and deceptive trade practices, conversion, and defamation.

¶ 7 Defendant moved to dismiss the action, contending that Plaintiff failed to state a claim on which relief could be granted. N.C. R. Civ. P. 12(b)(6) (2020). Specifically, Defendant argued for dismissal on account of Plaintiff’s failure to plead a corporate

veil piercing theory to establish personal liability against Defendant. Plaintiff filed a motion for partial summary judgment on most, but not all, of its claims.

¶ 8 In November 2020, after a hearing on the matter, Superior Court Judge George C. Bell entered an order *denying* Defendant's motion to dismiss and Plaintiff's motion for partial summary judgment and directing Plaintiff to amend his complaint to include the veil piercing theory within ten days. Plaintiff failed to do so.

¶ 9 Three months later, in February 2021, Judge Bell entered a new order again denying Defendant's motion to dismiss. However, this February 2021 order did not contain any language requiring Plaintiff to amend the complaint.

¶ 10 In any event, in December 2021, ten months after Judge Bell entered his second order denying Defendant's motion to dismiss, Judge Eady-Williams reconsidered Defendant's motion to dismiss and *granted it* based on Plaintiff's failure to amend his complaint. She did not reference Judge Bell's second order. Plaintiff appeals from both Judge Eady-Williams' order dismissing his claims and Judge Bell's order denying his motion for partial summary judgment on most of his claims.

#### I. Standard of Review

¶ 11 This Court reviews *de novo* orders granting a motion to dismiss for failure to state a claim upon which relief can be granted and for orders denying summary judgment under Rule 56. *Sykes v. Health Network Sols., Inc.*, 372 N.C. 326, 332, 828 S.E.2d 467, 471 (2019).

## II. Analysis

¶ 12 Plaintiff appeals Judge Eady-Williams’ order as well as from Judge Bell’s initial order. We discuss each below.

### A. Judge Eady-Williams’ Order

¶ 13 Plaintiff appeals from Judge Eady-Williams’ order granting Defendant’s motion to dismiss which relied on Judge Bell’s first order which had directed him to amend his complaint to add allegations concerning a corporate veil piercing theory. We conclude that the Order should be vacated. Plaintiff stated a claim by alleging that Defendant personally committed the acts for which he seeks damages, as further explained below.

¶ 14 We note that Plaintiff could have also argued that Judge Eady-Williams erred based on Judge Bell’s *second* order denying Defendant’s motion to dismiss, an order in which Judge Bell did not require Plaintiff to amend his complaint. Judge Bell was free to revisit his earlier order; however, Judge Eady-Williams was not free to overrule Judge Bell’s second order. *Calloway v. Ford Motor Co.*, 281 N.C. 496, 501, 189 S.E.2d 484, 488 (1972) (“The well-established rule in North Carolina is that no appeal lies from one Superior Court judge to another; that one Superior Court judge may not correct another’s errors of law; and that ordinarily one judge may not modify, overrule, or change the judgment of another Superior Court judge previously made in the same action.”).

¶ 15 In any event, contrary to Defendant’s contention, the corporate veil piercing theory is merely one of two common methods of establishing personal liability for torts committed by a corporate officer or director, the other of which is “individual responsibility for torts, such as breach of fiduciary duty, negligence, fraud, and misrepresentation.” *Estate of Hurst v. Moorehead I, LLC*, 228 N.C. App. 571, 572, 748 S.E.2d 568, 570 (2013); *see also Wilson v. McLeod Oil Co.*, 327 N.C. 491, 518, 398 S.E.2d 586, 600 (1990) (holding that an officer of a company may be held personally liable for the torts he actively participates in).

¶ 16 Thus, since Plaintiff alleged that Defendant personally committed the acts, Plaintiff did not “fail to state a claim upon which relief can be granted” merely by omitting to plead the corporate veil piercing theory. N.C. R. Civ. P. 12(b)(6).

¶ 17 We, therefore, vacate Judge Eady-Williams’ order. We do not address whether Plaintiff may seek damages on a corporate veil piercing theory.

#### B. Plaintiff’s Motion for Partial Summary Judgement

¶ 18 Plaintiff also appeals the portion of Judge Bell’s first order in which he denied Plaintiff’s motion for partial summary judgement. However, as our Supreme Court has instructed, “[o]rdinarily, the denial of a summary judgment motion is not immediately appealable as an interlocutory order.” *Bartley v. City of High Point*, 381 N.C. 287, 293, 2022-NCSC-63, \*16. And Plaintiff has failed in his brief to articulate

how Judge Bell's order affects a substantial right. Accordingly, we dismiss Plaintiff's appeal from Judge Bell's order denying his partial motion for summary judgment.

### III. Conclusion

¶ 19 We vacate Judge Eady-Williams' Order granting Defendant's motion for summary judgment. We dismiss Defendant's appeal from Judge Bell's interlocutory order denying his motion for partial summary judgment. We remand for further proceedings.

VACATED IN PART, DISMISSED IN PART, AND REMANDED.

Judges COLLINS and WOOD concur.

Report per Rule 30(e).