

FILED

03/10/2023

Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs February 1, 2023

RUBEN ESTRADA V. DJ EXTERIORS, LLC ET AL.

Appeal from the Circuit Court for Williamson County
No. 20-CV-255 Michael Binkley, Judge

No. M2022-01052-COA-R3-CV

This is an appeal from the granting of a directed verdict on limited issues in a jury trial. At the conclusion of the plaintiff's proof, the defendant moved for and was granted a directed verdict as to the issues of piercing the corporate veil, fraudulent conveyance, and punitive damages. The trial then continued as to a breach of contract claim asserted by the plaintiff, and the jury ultimately returned a verdict in the plaintiff's favor. The plaintiff now appeals, arguing that the trial court's ruling on the motion for directed verdict was in error. Having reviewed the record transmitted to us on appeal, we reverse the trial court's grant of a directed verdict as to the issues of piercing the corporate veil and fraudulent conveyance, but we affirm as to the issue of punitive damages.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed in Part, Reversed in Part, and Remanded.

ARNOLD B. GOLDIN, J., delivered the opinion of the Court, in which ANDY D. BENNETT, J., joined. KRISTI M. DAVIS, J., filed a separate opinion concurring in part and dissenting in part.

Linda Sue Nicklos, Nolensville, Tennessee, for the appellant, Ruben Nicklos Estrada.

Sarah Ferraro, Franklin, Tennessee, for the appellees, K. Ryan Meadows, James Reedy, DJ Exteriors, LLC, and Dustin Jones.

OPINION

BACKGROUND AND PROCEDURAL HISTORY

DJ Exteriors, LLC ("Defendant") was a limited liability company that provided masonry, siding, and roofing services for the construction industry. Defendant was owned

by three members—James Reedy, Dustin Jones, and Ryan Meadows.¹ Mr. Jones was the majority member and was responsible for the day-to-day operations of Defendant. Mr. Reedy and Mr. Meadows were involved with the administrative functions, with Mr. Reedy being in charge of Defendant’s accounting. When retained for construction projects, Defendant would typically hire a subcontractor to perform the work. Mr. Jones had previously worked with Ruben Estrada (“Plaintiff”) and hired him to perform labor services on numerous projects for Defendant. Mr. Jones had absolute authority on behalf of Defendant in entering into contracts with Plaintiff for his construction services. In total, Defendant retained Plaintiff on nineteen projects. In determining pricing for a project, Plaintiff would typically walk the property with Mr. Jones, and they would agree on the price for Plaintiff’s work on the project and on a start date for performance of the work. Plaintiff performed this same process on each of the projects he worked on for Defendant. Upon completion of a project, Plaintiff would contact Mr. Jones to assist him in preparing an invoice and help him make sure it was ready to be sent before sending the invoice to Mr. Reedy. On larger projects, Plaintiff would submit invoices intermittently throughout the project. Starting in July 2019, Defendant began underpaying Plaintiff’s invoices, and by December 2019, Plaintiff made demand on Defendant for the arrearage he claimed was owed to him.

By January 2020, Mr. Jones had decided to move back to Jackson, Tennessee. As a result, Defendant stopped accepting new projects, and the members were in the process of winding down the business. Plaintiff testified at trial that the unpaid arrearage owed to him by Defendant amounted to \$63,492.00. In January 2020, while Plaintiff was claiming he was owed this unpaid arrearage, Defendant’s bank account totaled approximately \$78,000.00. Instead of resolving Plaintiff’s unpaid invoices, Defendant members made cash distributions to themselves from Defendant’s bank account, reducing the balance in the account to \$16,730.17.

Unable to recover the funds he believed owed to him by Defendant, Plaintiff filed a lawsuit for breach of contract in the Williamson County Circuit Court. Plaintiff later amended his complaint naming the individual members of Defendant as parties to the lawsuit and alleged that he should be permitted to pierce the corporate veil of Defendant such that Plaintiff could recover personally against Mr. Reedy, Mr. Jones, and Mr. Meadows. Aside from his breach of contract claim, Plaintiff also pursued claims for fraudulent conveyance and punitive damages in this lawsuit, and when the case was tried in April 2022, Plaintiff put on specific proof of a fraudulent conveyance claim regarding the cash distributions Defendant made to its members which allegedly dissipated Defendant’s operating funds and made it unable to satisfy its disputed claim with Plaintiff.²

¹ Mr. Reedy, Mr. Jones, and Mr. Meadows were added as party-defendants in their individual capacities in the plaintiff’s third amended complaint. To avoid confusion with the Defendant LLC, they will be referred to by their names throughout this Opinion.

² Although the latest amended complaint in the case (as ultimately filed) had not actually directly pled fraudulent conveyance, that legal theory of recovery was openly acknowledged as an issue and claim

At the close of Plaintiff's proof, Defendant moved for a directed verdict as to the issues of piercing the corporate veil, fraudulent conveyance, and punitive damages. The trial court granted Defendant's motion for a directed verdict as to each of these issues. The trial then continued as to Plaintiff's claim for breach of contract against Defendant, for which the jury returned a verdict for Plaintiff in the amount of \$63,492.00, as well as prejudgment interest and discretionary costs. Plaintiff later filed a Rule 59 motion, asking the court to alter or amend its ruling on the directed verdict, or for a new trial. The trial court denied the motion, and this appeal followed.

ISSUE PRESENTED

Plaintiff raises multiple issues for our review on appeal, which we have condensed and restated as follows:

Whether the trial court erred in granting the motion for directed verdict on the issues of piercing the corporate veil, fraudulent conveyance, and punitive damages.

DISCUSSION

Rule 50.01 of the Tennessee Rules of Civil Procedure governs motions for a directed verdict and provides as follows:

A motion for a directed verdict may be made at the close of the evidence offered by an opposing party or at the close of the case. The court shall reserve ruling until all parties alleging fault against any other party have presented their respective proof-in-chief. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. The order of the court granting a motion for a directed verdict is effective without any assent of the jury.

Tenn. R. Civ. P. 50.01. A motion for a directed verdict provides a mechanism for

before the court. For instance, in one motion, Defendant, Mr. Reedy, Mr. Meadows, and Mr. Jones submitted that the punitive damages issue could only be pursued "in connection with [Plaintiff's] fraudulent conveyance claim." Further, we observe that in the opening statement made by defense counsel at trial, counsel specifically stated that the jury was "going to hear about a couple of other issues over the next couple of days; one is fraudulent conveyance." As it concerns the trial itself, Plaintiff did, in fact, put on proof of the fraudulent conveyance issue without any objection, fulfilling the foreshadowing of defense counsel.

determining a question of law, specifically, “whether the plaintiff has presented sufficient evidence to create an issue of fact for the jury to decide.” *Brown v. Christian Bros. Univ.*, 428 S.W.3d 38, 49 (Tenn. Ct. App. 2013) (citing *Burton v. Warren Farmers Co-op.*, 129 S.W.3d 513 (Tenn. Ct. App. 2002)). “A directed verdict cannot be based upon speculation, conjecture, guesswork, or a mere spark or glimmer of evidence.” *Id.* (citing *Bandeian v. Wagner*, 970 S.W.2d 460 (Tenn. Ct. App. 1997)). The grant of a directed verdict is “appropriate only when evidence, viewed reasonably, supports only one conclusion.” *Id.* (citing *Remco Equip. Sales, Inc. v. Manz*, 952 S.W.2d 437 (Tenn. Ct. App. 1997)). Thus, “[i]f ‘reasonable minds could . . . differ as to the conclusions to be drawn from the evidence,’ the motion must be denied.” *Id.* (quoting *Eaton v. McLain*, 891 S.W.2d 587, 590 (Tenn. 1994)). “In reviewing a motion for a directed verdict, courts must take the strongest legitimate view of the evidence against the directed verdict and must deny the motion in any case where all reasonable persons would not reach the same conclusion.” *Id.* (citing *Smith v. Inman Realty Co.*, 846 S.W.2d 819 (Tenn. Ct. App. 1992)). “Only if there is no material evidence in the record that would support a verdict for the plaintiff under any of the plaintiff’s theories, may the trial court’s action in directing a verdict be sustained.” *Id.* (citing *Jamestowne on Signal, Inc. v. First Fed. Sav. & Loan Ass’n*, 807 S.W.2d 559 (Tenn. Ct. App. 1990)).

In the present case, the trial court granted a directed verdict in favor of Defendant as to piercing the corporate veil, fraudulent conveyance, and punitive damages. We will address the propriety of the trial court’s decision as to each of these matters below.³

Piercing the Corporate Veil

“There is no question that the courts may, in appropriate circumstances, pierce the corporate veil and attribute the actions of a corporation to its shareholders.” *CAO Holdings, Inc. v. Trost*, 333 S.W.3d 73, 88 (Tenn. 2010). “To pierce the corporate veil, a court must be convinced that the separate corporate entity ‘is a sham or a dummy’ or that disregarding the separate corporate entity is ‘necessary to accomplish justice.’” *Id.* (quoting *Oceanics Sch., Inc. v. Barbour*, 112 S.W.3d 135, 140 (Tenn. Ct. App. 2003)). This Court has previously explained:

The principle of piercing the fiction of the corporate veil is to be applied with great caution and not precipitately, since there is a presumption of corporate regularity. The party wishing to negate the existence of such separate entity has the burden of proving facts sufficient to justify piercing the corporate veil.

³ In his brief, Plaintiff also presents an argument as to promissory fraud. However, this was not at issue in the directed verdict motion and, as such, is inappropriate for us to consider on appeal in relation to Plaintiff’s requested review on the trial court’s directed verdict ruling.

VP Bldgs., Inc. v. Polygon Grp., No. M2001-00613-COA-R3-CV, 2002 WL 15634, at *4-5 (Tenn. Ct. App. Jan. 8, 2002) (internal citations omitted). The doctrine of piercing the corporate veil applies equally to cases in which a party seeks to pierce the veil of a limited liability company, such as Defendant:

As a general rule, members, owners, employees or other agents of a Tennessee limited liability company have no personal liability for the debts or obligations of the company. Under an equitable remedy known as “piercing the corporate veil,” however, “the separate legal entity of a corporation may be disregarded upon a showing that it is a sham or a dummy or where necessary to accomplish justice.” Despite the inapplicability of the remedy’s name, the “corporate veil” of a Tennessee limited liability company may also be pierced, utilizing the same standards.

Edmunds v. Delta Partners, L.L.C., 403 S.W.3d 812, 828-29 (Tenn. Ct. App. 2012) (quoting *In re Steffner*, 479 B.R. 746, 755 (Bkrcty. E.D. Tenn. 2012) (internal citations omitted)). In determining whether it is appropriate to pierce the corporate veil, courts rely on factors espoused in *Federal Deposit Insurance Corp. v. Allen*, 584 F. Supp. 386 (E.D. Tenn. 1984), a case which discusses as follows:

Factors to be considered in determining whether to disregard the corporate veil include not only whether the entity has been used to work a fraud or injustice in contravention of public policy, but also: (1) whether there was a failure to collect paid in capital; (2) whether the corporation was grossly undercapitalized; (3) the nonissuance of stock certificates; (4) the sole ownership of stock by one individual; (5) the use of the same office or business location; (6) the employment of the same employees or attorneys; (7) the use of the corporation as an instrumentality or business conduit for an individual or another corporation; (8) **the diversion of corporate assets by or to a stockholder or other entity to the detriment of creditors**, or the manipulation of assets and liabilities in another; (9) the use of the corporation as a subterfuge in illegal transactions; (10) the formation and use of the corporation to transfer to it the existing liability of another person or entity; and (11) the failure to maintain arm[']s length relationships among related entities.

Id. at 397 (emphasis added). “Generally, no one factor is conclusive in determining whether to pierce the corporate veil; rather, courts will rely upon a combination of factors in deciding the issue.” *Edmunds*, 403 S.W.3d at 830 (citing *Pamperin v. Streamline Mfg., Inc.*, 276 S.W.3d 428, 438 (Tenn. Ct. App. 2008)).

Here, Plaintiff maintains that piercing the corporate veil as to Defendant is appropriate for a multitude of reasons, including that Defendant’s members took cash

distributions when there were outstanding bills, causing Defendant to allegedly run afoul of its own operating agreement and render it insolvent. Specifically, Plaintiff points to Section 4.4 of Defendant's operating agreement, titled "Distribution of Available Cash Flow," which provides as follows:

The Members shall cause distributions of Available Cash Flow to be made to themselves in amounts as the Members by an equal or majority vote may determine from time to time. Any such distributions to Members shall be made in proportion to the Financial Interests of each member giving special consideration to the individual Member's capital account. **No distribution shall be made pursuant to this Agreement unless, after such distribution is made, the assets of the Company are in excess of all liabilities of the Company except liabilities to Members on account of their contributions to the capital of the Company.**

(emphasis added).

We agree with Plaintiff that the trial court erred in granting a directed verdict as to the piercing of the corporate veil issue. In relevant part, we observe that the corporate veil may be pierced "when the corporation is liable for a debt but is without funds due to some misconduct on the part of the officers and directors." *MUROLL Gesellschaft M.B.H. v. Tenn. Tape, Inc.*, 908 S.W.2d 211, 213 (Tenn. Ct. App. 1995) (citing *Anderson v. Durbin*, 740 S.W.2d 417 (Tenn. Ct. App. 1987)). Moreover, as outlined earlier, one of the *Allen* factors specifically focuses on whether there has been "the diversion of corporate assets by or to a stockholder or other entity to the detriment of creditors." *Allen*, 584 F. Supp. at 397. Again, a motion for a directed verdict posits "whether the plaintiff has presented sufficient evidence to create an issue of fact for the jury to decide." *Brown*, 428 S.W.3d at 49 (citing *Burton*, 129 S.W.3d 513). As such, the grant of a directed verdict is proper only in cases where the evidence, as viewed reasonably, supports only **one** conclusion. *Id.* (citing *Remco Equip. Sales, Inc.*, 952 S.W.3d 437). Therefore, if reasonable minds could draw a different conclusion, the motion is to be denied. *Id.* (citing *Eaton*, 891 S.W.2d at 590). Here, based on our review of the record, we conclude that there was sufficient evidence such as to allow reasonable minds to come to different conclusions as to whether piercing the corporate veil is appropriate under the facts of this case. Proffered testimony makes clear that there was a substantial disputed unpaid arrearage between Defendant and Plaintiff, and despite the arrearage not yet being resolved, Defendant issued substantial cash distributions to its members, rendering it essentially insolvent as to Plaintiff's claim. Although Defendant argues that it had a "good faith dispute" regarding certain of Plaintiff's invoices, Plaintiff of course provided testimony regarding the significant arrearage he claimed had been owed to him, while also adducing evidence in relation to the aforementioned cash distributions by Defendant to its members. "[I]f material evidence is in dispute or doubt exists as to the conclusions to be drawn from that evidence, the motion must be denied." *Johnson v. Farmers Mut. Ins. Co.*, 205 S.W.3d 365, 370 (Tenn. 2006) (citing *Hurley v. Tenn. Farmers*

Mut. Ins. Co., 922 S.W.2d 887, 891 (Tenn. Ct. App. 1995)). The trial court itself noted that there are numerous “different responses” as to the actions of Defendant’s members. We agree. In reviewing Defendant’s operating agreement and the proffered testimony in light of the *Allen* factor that notes “the diversion of corporate assets by or to a stockholder or other entity to the detriment of creditors” may be considered when determining whether piercing the corporate veil is appropriate, we conclude that because multiple conclusions may be drawn from the evidence presented at trial, this issue should have been allowed to go to the jury. As such, the trial court’s ruling on this issue was error and is reversed.

Fraudulent Conveyance & Punitive Damages

Plaintiff also maintains that the trial court erred when it granted a directed verdict as to his claim of fraudulent conveyance. “A conveyance may be fraudulent for two reasons: one made with actual intent to delay, hinder, or defraud creditors, . . . or one made without fair consideration if the grantor is insolvent or the conveyance renders him/her insolvent.” *Orlando Residence, Ltd. v. Nashville Lodging Co.*, 104 S.W.3d 848, 854 (Tenn. Ct. App. 2002) (citing Tenn. Code Ann. §§ 66-3-101, 66-3-305). Tennessee Code Annotated section 66-3-305 provides, in pertinent part:

- (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor’s claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
 - (1) With actual intent to hinder, delay, or defraud any creditor of the debtor[.]

Tenn. Code Ann. § 66-3-305(a)(1). In determining the intent as to section 66-3-305(a)(1), the court may look at certain enumerated factors, among other considerations, as to whether:

- (1) The transfer or obligation was to an insider;
- (2) The debtor retained possession or control of the property transferred after the transfer;
- (3) The transfer or obligation was disclosed or concealed;
- (4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
- (5) The transfer was of substantially all of the debtor’s assets;
- (6) The debtor absconded;
- (7) The debtor removed or concealed assets;
- (8) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- (9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

- (10) The transfer occurred shortly before or shortly after a substantial debt was incurred; and
- (11) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

Tenn. Code Ann. § 66-3-305(b).

In this case, Plaintiff argues that subsequent to Defendant beginning the winding down of its operations, Mr. Jones had deposited sufficient receivables into Defendant's account to satisfy Plaintiff's claim. However, as touched on earlier, Plaintiff introduced evidence at trial that, contrary to its operating agreement, Defendant made cash distributions to its members, leaving a balance far too depleted to satisfy Plaintiff's claim. As such, Plaintiff maintains that these payments to Defendant's members constitute a fraudulent conveyance. In granting a directed verdict in favor of Defendant on this particular issue, the trial court merely noted that "[t]here are certain elements of fraud that must be met," but that it did not see those elements present. Based on our review of the record, we conclude that there was material evidence that could allow reasonable minds to reach a different conclusion and that the trial court, therefore, erred in granting a directed verdict on this issue. Notably, the record clearly shows that Defendant made a cash distribution to its members in January 2020 that severely dissipated its operating income, even though Mr. Reedy testified that, at the time, he was aware of Plaintiff's substantial disputed arrearage. Subsequent to these cash distributions, Defendant did not have sufficient funds to satisfy Plaintiff's claim. Essentially, Defendant was insolvent as to Plaintiff's claim once it made these cash distributions. We conclude that, based on the evidence presented at trial, reasonable minds could differ as to whether Defendant's actions constitute a fraudulent conveyance pursuant to Tennessee Code Annotated section 66-3-305(a)(1). As such, the trial court's ruling on this issue is reversed, and this issue should also be allowed to go the jury.

Following from his assertion of fraudulent conveyance, Plaintiff also requested punitive damages. Under Tennessee law, punitive damages are available where a party proves, by clear and convincing evidence, that a defendant has acted intentionally, fraudulently, maliciously, or recklessly. *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 (Tenn. 1992). As explained by the Tennessee Supreme Court,

A person acts intentionally when it is the person's conscious objective or desire to engage in the conduct or cause the result. A person acts fraudulently when (1) the person intentionally misrepresents an existing, material fact or produces a false impression, in order to mislead another or to obtain an undue advantage, and (2) another is injured because of reasonable reliance upon that representation. A person acts maliciously when the person is motivated by ill will, hatred, or personal spite. A person acts recklessly when the person is aware of, but consciously disregards, a substantial and unjustifiable risk of

such a nature that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances.

Id. (internal citations omitted).

Our review of the trial court’s grant of a directed verdict in favor of Defendant as to the issue of punitive damages is again limited to whether the evidence supporting punitive damages was sufficient such as to warrant submission to the jury. Punitive damages are awarded only in the most egregious of circumstances and will require proof of a clear and convincing nature. *Id.* “Clear and convincing evidence is a different and higher standard than preponderance of the evidence. It means that the defendant’s wrong, if any, must be so clearly shown that there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.” T.P.I. – Civ. 14.55(A) (21st ed. 2021). Although we have concluded that there was sufficient evidence concerning Plaintiff’s fraudulent conveyance claim such that a directed verdict as to that claim was error, the requisite level of proof required to prove a fraudulent conveyance is considerably lower than the clear and convincing evidence standard required to recover punitive damages. *See Stone v. Smile*, No. E2009-00047-COA-R3-CV, 2009 WL 4893563, at *4 (Tenn. Ct. App. Dec. 18, 2009) (“In a fraudulent conveyance case, the burden of proof is by a preponderance of the evidence.”) (citing *James v. Joseph*, 1 S.W.2d 1017, 1019 (Tenn. 1928)). Accordingly, because Plaintiff may have satisfied the burden of proof for his claim of fraudulent conveyance, it does not necessarily follow that such proof will rise to the level required for recovery of punitive damages. “When a court is called upon to determine a motion for directed verdict on punitive damages, the court is ‘required to determine whether there was material evidence of a clear and convincing nature to support an award of punitive damages,’ while still taking the strongest legitimate view of plaintiff’s evidence.” *Jarmakowicz v. Suddarth*, No. M1998-00920-COA-R3-CV, 2001 WL 196982, at *14 (Tenn. Ct. App. Feb. 28, 2001) (quoting *Wasielewski v. K-Mart Corp.*, 891 S.W.2d 916, 919 (Tenn. Ct. App. 1994)). Ultimately, having reviewed Plaintiff’s appellate brief on this issue, we conclude that he has waived any issue he has concerning the trial court’s decision to grant a directed verdict on the punitive damages claim. Indeed, following a one-sentence general legal statement concerning when punitive damages are available, Plaintiff’s entire argument on the punitive damages issue is as follows: “Plaintiff reminds this court that the jury asked how they could award Plaintiff’s attorney fees in addition to his damages award, even though attorney fees were not part of the jury charge. One can presume their desire was punitive in nature.” Putting aside the fact that no citation to the record is provided for Plaintiff’s assertion, this discussion as to what the jury supposedly asked does not address in any way the question that must guide the directed verdict question, i.e., “whether the plaintiff has presented *sufficient evidence* to create an issue of fact for the jury to decide.” *Brown*, 428 S.W.3d at 49 (emphasis added). Because Plaintiff’s argument does not endeavor in any way to explain why the evidence was sufficient to create a jury question on punitive damages, the issue is waived. *See, e.g., Smith v. Hughes*, 639 S.W.3d 627, 648 (Tenn. Ct. App. 2021) (noting that it is not the role of the courts to construct a litigant’s

case or arguments and that issues may be deemed waived when a party fails to develop an argument or constructs merely a skeletal one).

Defendant's Request for a New Trial Pending Disposition

In its brief, Defendant appears to request that, in the event that this Court finds reversible error as to any of the issues argued by Plaintiff, we remand for a new trial on *all* the issues in order to avoid prejudice to Defendant. However, Defendant did not raise this as an issue on appeal, and we deem it waived. *See* Tenn. R. App. P. 13(b) (“Review generally will extend only to those issues presented for review.”); *see also* *Watson v. Watson*, 309 S.W.3d 483, 497 (Tenn. Ct. App. 2009) (“The appellate court may treat issues that are not raised on appeal as being waived.”).

CONCLUSION

Based on the foregoing, we reverse the trial court’s grant of a directed verdict in favor of Defendant as to the claims of piercing the corporate veil and fraudulent conveyance. However, we affirm the grant of a directed verdict as to the issue of punitive damages. The matter is remanded for further proceedings consistent with this Opinion.

s/ Arnold B. Goldin
ARNOLD B. GOLDIN, JUDGE