

**Reverse and Render in Part; Affirmed in part; Opinion Filed May 5, 2016.**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-13-00835-CV**

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**ECLAT PRIVATE EQUITY, INC., RICHARD WELLS, AND STACIE AULDS,  
Appellants  
V.  
HASSAN PARSA, Appellee**

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**On Appeal from the 134th Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. DC-12-05093**

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**MEMORANDUM OPINION**

Before Justices Bridges, Fillmore, and Stoddart  
Opinion by Justice Stoddart

Appellants Eclat Private Equity, Inc. (Eclat), Richard Wells, and Stacie Aulds<sup>1</sup> appeal the trial court's adverse judgment following a bench trial. Although a party to the trial court proceedings below and an appellant before this Court, Eclat does not raise any issues in this appeal. On appeal, the Wells argue, among other things, that the trial court erred by finding them liable for breach of contract and fraud and by awarding attorney's fees to appellee Hassan Parsa. We reverse the trial court's judgment against the Wells and render judgment that Parsa take nothing against the Wells. We affirm the trial court's judgment in all other respects.

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<sup>1</sup> Richard Wells and Stacie Aulds were married in April 2011. Stacie changed her last name from Aulds to Wells. We will refer to her as Stacie Wells. Because they have the same last name, when we refer to them individually, we will use their first names.

## FACTUAL BACKGROUND

Stacie was the president and a shareholder of Eclat. Richard was a vice-president, but not a shareholder. Eclat owned real property located at 6211 West Northwest Highway, Building A, Unit C-120, Dallas, Texas (the Property). On March 12, 2008, Parsa entered into a Contract for Deed with Eclat to purchase the Property (the Contract). Stacie executed the Contract on behalf of Eclat. The Contract stated that the only existing lien against the Property was a promissory note payable to Preston National Bank (the mortgage), and represented that Eclat would not create or permit additional liens to be filed against the Property after March 12, 2008. The trial court found that Parsa relied on these representations.

It is uncontested that at the time Eclat entered into the Contract, Southwestern Bell Yellow Pages, Inc. had a lien against the Property. The Wells maintained they did not know about the Southwestern Bell lien when the Contract was signed. It also is uncontested that by the time Parsa received the deed to the Property, several additional liens had been filed against the Property. At trial, the Wells maintained they did not know about any liens other than the mortgage. However, the trial court concluded the Wells did know about the additional liens against the Property and that they received notices from all creditors regarding the liens placed on the Property before and after March 12, 2008.

Parsa made all payments required by the Contract and Eclat accepted those payments. Although Parsa made his final payment on or about September 29, 2008, Eclat did not provide the warranty deed until August 3, 2010. After Parsa learned about the outstanding liens against the Property, he sued Eclat and the Wells.

Following a bench trial, the trial court entered judgment in favor of Parsa and issued findings of fact and conclusions of law. The Wells challenge several of these findings and the judgment on appeal.

## LAW & ANALYSIS

### A. Standard of Review

Appellants challenge the legal sufficiency of the evidence supporting many of the trial court's findings. In an appeal from a nonjury trial, findings of fact carry the same weight as a jury's verdict and are reviewed under the same standards that are applied in reviewing evidence to support a jury's verdict. *Fritz Mgmt., LLC v. Huge Am. Real Estate, Inc.*, No. 05-14-00681-CV, 2015 WL 3958292, at \*1 (Tex. App.—Dallas June 30, 2015, pet. dismissed w.o.j.) (citing *Shaw v. County of Dallas*, 251 S.W.3d 165, 169 (Tex. App.—Dallas 2008, pet. denied)). When evaluating the legal sufficiency of the evidence to support a finding, we view the evidence in the light most favorable to the finding, indulging every reasonable inference supporting it. *Id.* (citing *City of Keller v. Wilson*, 168 S.W.3d 802, 822 (Tex. 2005)). We “must credit favorable evidence if reasonable jurors could, and disregard contrary evidence unless reasonable jurors could not.” *City of Keller*, 168 S.W.3d at 827. The ultimate test is whether the evidence allows reasonable and fair-minded people to reach the finding under review. *See id.* Anything more than a scintilla of evidence is legally sufficient to support a challenged finding. *Fritz Mgmt.*, 2015 WL 3958292, at \*1 (citing *Formosa Plastics Corp. USA v. Presidio Eng'rs & Contractors*, 960 S.W.2d 41, 48 (Tex. 1998)).

### B. Breach of Contract

The trial court concluded that Eclat and the Wells breached the Contract. Eclat did not appeal the trial court's adverse judgment. However, the Wells argue the evidence is legally insufficient to show they breached the Contract because the Contract was between Eclat and Parsa. We agree.

Corporations are separate legal entities from their shareholders, officers, and directors. *Doyle v. Kontemporary Builders, Inc.*, 370 S.W.3d 448, 457 (Tex. App.—Dallas 2012, pet.

denied). A fundamental principle of corporate law is that individuals can incorporate a business and thereby normally shield themselves from personal liability for the corporation's contractual obligations. *Id.* A shareholder may not be held liable to the corporation or its obligees with respect to any contractual obligation of the corporation or any matter relating to or arising from the obligation on the basis that the shareholder is or was the alter ego of the corporation or on the basis of actual or constructive fraud, a sham to perpetrate a fraud, or other similar theory. *Id.*

The unchallenged findings of fact show Stacie signed the Contract on behalf of Eclat and Richard signed other documents on behalf of Eclat in conjunction with the Contract. However, only Eclat and Parsa were parties to the Contract. Parsa entered into the Contract with Eclat and only Eclat is liable for the breach of that contract. The Wells are not personally liable to Parsa for Eclat's contractual obligations. We conclude the trial court erred by finding the Wells liable to Parsa for breach of contract.

### **C. Attorney's Fees**

The Wells assert the trial court erred by awarding attorney's fees against them. Attorney's fees may be recoverable for a prevailing party in a breach of contract action. *See Woodhaven Partners, Ltd. v. Shamoun & Norman, L.L.P.*, 422 S.W.3d 821, 838 (Tex. App.—Dallas 2014, no pet.). However, because Parsa did not prevail in his breach of contract claim against the Wells, the trial court erred by awarding attorney's fees against the Wells and in favor of Parsa.

### **D. Fraud**

The Wells argue there is insufficient evidence to support the trial court's adverse finding on Parsa's fraud claim. Parsa sued Eclat and the Wells for fraud, alleging they misrepresented to Parsa that the only lien on the Property at the time the parties signed the Contract was the mortgage and, further, Parsa's "payments were fraudulently accepted subsequent to liens." On

summary judgment, the trial court entered an adverse judgment against Eclat on the fraud claim and Eclat has not appealed that judgment. At trial, the court found the Wells also were liable to Parsa for fraud.

To prevail on a claim of fraud, a plaintiff must show: (1) a material representation was made; (2) the representation was false; (3) when the representation was made, the defendants knew it was false or made it recklessly without any knowledge of the truth; (4) the defendant made the representation intending that the plaintiff act on it; (5) the plaintiff actually relied on it; and (6) the plaintiff incurred damages. *Brauss v. Triple M Holding GmbH*, 411 S.W.3d 614, 622 (Tex. App.—Dallas 2013, pet. denied). The only statements that Parsa asserts were fraudulent appeared in the Contract. As discussed with respect to Parsa’s claim for breach of contract, Eclat, not the Wells, sold the Property to Parsa. Further, Eclat’s liability does not necessarily translate to liability for the Wells.

Parsa does not identify any statements in the record made by Richard or Stacie that relate to his fraud claims, and, after reviewing the entire record, we have not found any. Parsa asserts the Wells knew about the liens and should have disclosed them to Parsa. However, there is no evidence that Richard or Stacie told Parsa there were not liens on the Property or no additional liens would be allowed to be created against the Property. The sole misrepresentations about which he complains appear only in the Contract. Because there is no evidence that the Wells made any misrepresentations to Parsa, the trial court erred by finding them liable for fraud.

#### **E. Alter Ego**

In finding of fact 25, the trial court concluded the Wells caused Eclat “to be used for the purpose of perpetrating and did perpetrate actual fraud on Mr. Parsa primarily for the direct personal benefit of” the Wells. In their brief, appellants assert: “This is not an alter ego case and there are no pleadings or evidence to support that proposition. At trial, any attempt to try this

case on that basis was strenuously objected to by Defendants’ attorney and the Court sustained those objections.”

When a plaintiff shows that a shareholder used a corporation to “perpetrate an actual fraud . . . primarily for the direct personal benefit” of the shareholder, the plaintiff may pierce the corporate veil and the corporate form may be disregarded. *See* TEX. BUS. ORGS. CODE ANN. § 21.223(b); *Willis v. Donnelly*, 199 S.W.3d 262, 271–73 (Tex. 2006). The various theories for piercing the corporate veil must be specifically pled or they are waived, unless they are tried by consent. *Endsley Elec., Inc. v. Altech, Inc.*, 378 S.W.3d 15, 22 (Tex. App.—Texarkana 2012, no pet.) (citing *Mapco, Inc. v. Carter*, 817 S.W.2d 686, 688 (Tex. 1991); *Seidler v. Morgan*, 277 S.W.3d 549 (Tex. App.—Texarkana 2009, pet. denied); *Town Hall Estates–Whitney, Inc. v. Winters*, 220 S.W.3d 71, 86 (Tex. App.—Waco 2007, no pet.)).

Parsa did not specifically plead any theory to pierce the corporate veil and he does not argue the issue was tried by consent. Therefore, we conclude the trial court’s finding of fact number 25 is erroneous.

#### CONCLUSION

Because we have concluded the trial court erred by finding the Wells liable to Parsa for breach of contract, fraud, and attorney’s fees, we need not address other issues raised in appellants’ brief. *See* TEX. R. APP. P. 47.1.

We reverse the trial court’s judgment against the Wells and render judgment that Parsa take nothing against the Wells. We affirm the trial court’s judgment in all other respects.

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/Craig Stoddart/  
CRAIG STODDART  
JUSTICE



**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

ECLAT PRIVATE EQUITY, INC.,  
RICHARD WELLS, AND STACIE  
AULDS, Appellants

No. 05-13-00835-CV      V.

HASSAN PARSA, Appellee

On Appeal from the 134th Judicial District  
Court, Dallas County, Texas  
Trial Court Cause No. DC-12-05093.  
Opinion delivered by Justice Stoddart.  
Justices Bridges and Fillmore participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **REVERSED in part** and judgment is **RENDERED** that:  
appellee Hassan Parsa take nothing against appellants Richard Wells and Stacie Aulds.

In all other respects, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered this 5th day of May, 2016.