STATE OF MICHIGAN

COURT OF APPEALS

WOODRIDGE HILLS ASSOCIATION, Plaintiff-Appellee,	UNPUBLISHED October 24, 2013
v	No. 310940 Wayne Circuit Court
DOUGLAS WALTER WILLIAMS, and D.W. WILLIAMS, LLC, Defendant-Appellant.	LC No. 10-005261-CK

Before: BECKERING, P.J., and O'CONNELL and SHAPIRO, JJ.

PER CURIAM.

This case comes before this Court following a remand in *Woodridge Hills Assoc v Williams*, unpublished opinion per curiam of the Court of Appeals, issued December 20, 2011 (Docket No. 300193). Defendants Douglas Williams (Williams) and D.W. Williams, LLC (DWW) now appeal by right the trial court order that granted summary disposition in favor of plaintiff Woodridge Hills Association. Because the trial court did not err by piercing the corporate veil between Williams and Redford Roofing and Construction Company, Inc. (Redford) or by imposing successor liability on DWW, we affirm.

In 2006, plaintiff hired Redford to replace all the roofs in its condominium development. Williams was the president, sole shareholder, and sole officer of Redford. The project was completed, but plaintiff filed suit against Redford alleging that it breached the contract by, among other things, performing substandard work. On May 29, 2009, the Livingston Circuit Court entered a judgment in favor of plaintiff and against Redford in the amount of $182,975. Plaintiff's attempts to collect on the judgment were unsuccessful.

On October 29, 2009, Redford filed for bankruptcy protection. Shortly thereafter, Williams created DWW. He was its sole member and officer.

On May 6, 2010, plaintiff filed this action against Williams and DWW, seeking to hold each of them jointly and severally liable on the judgment plaintiff obtained against Redford. Plaintiff sought to recover against Williams and DWW under theories of piercing the corporate veil, fraudulent transfer, and successor liability. The trial court granted summary disposition in favor of defendants, concluding, among other things, that plaintiffs lacked standing to pursue

their claims. This Court reversed and concluded that, "plaintiff's claims are ripe and appropriate for litigation in a Michigan state court." *Woodridge Hills Assoc*, p 1.[1] On remand, the case proceeded through discovery. Thereafter, plaintiff and defendants filed cross-motions for summary disposition under MCR 2.116(C)(10). The trial court granted summary disposition in favor of plaintiff, holding that the corporate veil between Williams and Redford could be pierced and holding Williams personally liable on the judgment against Redford. The court further concluded that DWW was liable on the judgment against Redford under the theory of successor liability. Defendants now appeal.

We review de novo a trial court's grant of summary disposition. *Lakeview Commons Ltd Partnership v Empower Yourself, LLC*, 290 Mich App 503, 506; 802 NW2d 712 (2010). Summary disposition of all or part of a claim may be granted when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). We also review de novo a trial court's decisions to pierce the corporate veil and impose successor liability. *Lakeview Commons*, 290 Mich App at 506, 509.

Defendants first argue that the trial court erred when it pierced the corporate veil between Redford and Williams. In general, a corporation is treated as an entity that is completely separate from its stockholders. *Foodland Distrib v Al-Naimi*, 220 Mich App 453, 456; 559 NW2d 379 (1996). That separation may be ignored, however, "where there is a unity of interest of the stockholders and the corporation and where the stockholders have used the corporate structure in an attempt to avoid legal obligations." *Id*. "Piercing the corporate veil requires the following elements: (1) the corporate entity is a mere instrumentality of another individual or entity, (2) the corporate entity was used to commit a wrong or fraud, and (3) there was an unjust injury or loss to the plaintiff." *Lakeview Commons*, 290 Mich App at 510.

Viewing the evidence in the light most favorable to defendants, *id*. at 506, we conclude that there is no genuine issue of material fact whether Redford's corporate veil should be pierced. The evidence overwhelmingly established that Williams treated Redford as his alter ego. First, Williams routinely used the corporation to pay his personal expenses, including his personal vehicle, home cable, internet, and telephone service, as well as his family's cellular telephone service. He also used the corporation to pay his dues and other expenses at the Detroit Athletic Club and the Western Golf & Country Club. Lastly, Williams used the corporation to pay health insurance premiums on behalf of himself and his family.

Defendants do not dispute the above expenditures; rather, they argue that Redford properly reconciled Williams's business and personal expenses. In support, defendants rely on a letter from the Internal Revenue Service, which states: "We've completed the examination of your tax return . . . . We made no changes to your reported tax." Defendants argue that the IRS letter is proof that Redford was properly reconciling personal and business expenses. We disagree. The letter relates to an IRS examination of Redford; however, there is no indication

[1] "The law of the case doctrine holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals with respect to that issue." *Ashker v Ford Motor Co*, 245 Mich App 1, 13; 627 NW2d 1 (2001).

that the IRS reviewed Redford's business expenses as part of its examination. Moreover, the letter is in reference to Redford's 2006 tax return. The expenses at issue in this case occurred between 2008 and 2009. Therefore, the IRS letter is irrelevant to our resolution of the instant case.

Second, Williams testified that he regularly made personal loans to Redford. Williams and Redford, however, never executed any promissory notes evidencing the alleged loans or the terms and conditions of repayment, nor did they execute any documentation evidencing repayment. Assuming Williams did makes loans to Redford, it appears that he simply wrote checks to the corporation and then wrote checks to himself from the corporation whenever he desired. This structure shows a general disregard for corporate formalities and indicates that Williams treated his money and Redford's money as one in the same.

The evidence also established that the corporate entity was used to commit a wrong or fraud. As this Court previously noted, "the allegations and Williams' testimony reflect that . . . the corporate entity was used to commit a wrong (breach of contract) leading to a substantial judgment against Redford . . . ." *Woodridge Hills Assoc*, p 9; see *Ashker*, 245 Mich App at 13. In addition to the breach of contract, the evidence shows that Williams used Redford to circumvent plaintiff's collection efforts. Williams stated that he received notice of plaintiff's writ of garnishment. Thereafter, he started pulling money out of Redford's bank account and then filed bankruptcy on behalf of Redford. The evidence overwhelmingly showed that Williams used Redford to circumvent plaintiff's collection efforts and shield himself from personal liability. Finally, the evidence showed that "plaintiff suffered an unjust injury or loss, i.e., shoddy roofs needing repair and an uncollectible judgment." *Woodridge Hills Assoc*, p 9; see *Ashker*, 245 Mich App at 13. Accordingly, the trial court did not err by piercing the corporate veil between Williams and Redford.

Defendants next argues that the trial court erred by imposing successor liability on DWW, the corporation Williams started shortly after Redford filed for bankruptcy. The traditional rule of successor liability focused on the nature of the transaction between the predecessor and successor corporations and imposed successor liability where the acquisition was accomplished by merger, with shares of stock serving as consideration. *Foster v Cone-Blanchard Machine Co*, 460 Mich 696, 702; 597 NW2d 506 (1999). The traditional rule did not impose liability where the purchase was accomplished by an exchange of cash for assets, unless one of five narrow exceptions applied:

> "(1) where there is an express or implied assumption of liability; (2) where the transaction amounts to a consolidation or merger; (3) where the transaction was fraudulent; (4) where some of the elements of a purchase in good faith were lacking, or where the transfer was without consideration and the creditors of the transferor were not provided for; or (5) where the transferee corporation was a mere continuation or reincarnation of the old corporation." [*Foster*, 460 Mich at 702, quoting *Turner v Bituminous Cas Co*, 397 Mich 406, 417 n 3; 244 NW2d 873 (1976).]

The trial court concluded that DWW was a mere continuation or reincarnation of Redford and was therefore liable on plaintiff's judgment against Redford.[2] The "mere continuation" doctrine forces a successor corporation to accept the predecessor's liability with the benefits of continuity where there is a continuity of enterprise between the successor and the predecessor corporations. *Foster*, 460 Mich at 703. Under this rule,

> a prima facie case of continuity of enterprise exists where the plaintiff establishes the following facts: (1) there is continuation of the seller corporation, so that there is a continuity of management, personnel, physical location, assets, and general business operations of the predecessor corporation; (2) the predecessor corporation ceases its ordinary business operations, liquidates, and dissolves as soon as legally and practically possible; and (3) the purchasing corporation assumes those liabilities and obligations of the seller ordinarily necessary for the uninterrupted continuation of normal business operations of the selling corporation. [*Id.*]

The record is replete with evidence that DWW is a continuation of Redford. Williams was the sole member and officer of both companies. Invoices in the record indicate that Williams ran both corporations from his home. DWW also appears to have utilized several of Redford's assets. DWW used several of Redford's work vehicles, which Williams purchased from the bankruptcy trustee and transferred to DWW. A forensic examination of DWW's computer revealed Redford invoices, indicating that both companies used the same computer. DWW also maintained the same vehicle insurance policy as Redford, listing the same vehicles and authorized drivers as Redford's policy; indeed, it appears that Williams merely changed the name of the insured from Redford to DWW when he renewed the policy in December 2010. Williams similarly transferred his builder's license from Redford to DWW.

Defendant argues that, because DWW engaged in "general contracting" and not "roofing," as did Redford, the two companies did not engage in the same general business. The record indicates the opposite. While invoices show that DWW engaged in activities other than roofing, it nonetheless performed a substantial amount of roofing. Documents from Michigan's Department of Licensing and Regulatory Affairs list "roofing" as a specialty of both Redford and DWW. Williams also admitted that DWW uses many of the same subcontractors as Redford. Accordingly, the evidence supports a finding that Redford and DWW were engaged in the same *general* business operations, i.e., roofing and general construction, and that plaintiff established the first factor of the *Foster* test.

As to the second factor, Redford ceased business operations, filed for bankruptcy, and DWW began operations soon after. Williams stated that Redford completed its last job in

[2] During the motion hearing, the trial court stated that all of Redford Roofing's assets were transferred to DWW; however, in its written order, the Court stated that it was granting summary disposition in favor of plaintiff in "[i]n reliance upon the statement of facts and arguments made in writing and orally by Plaintiff . . . ." Plaintiff's argument below, and on appeal, was that DWW was a mere continuation of Redford.

August or September 2009 and that DWW performed its first job in May 2010. His assertion is contradicted by the record. An invoice dated November 12, 2009, signed by Williams, contains the name "D.W. WILLIAMS." Therefore, it is clear that Williams began operating under the name DWW almost immediately after Redford filed for bankruptcy, and plaintiff established the second factor of the *Foster* test.

Redford filed for bankruptcy, and, therefore, DWW was unable to assume many of its liabilities and obligations. However, the obligations that were assumable were taken on by DWW. DWW took over Redford's insurance payment obligations on the same work vehicles. While it does not appear that DWW finished any of Redford's jobs, it did begin invoicing clients almost immediately after Redford filed for bankruptcy while using many of the same subcontractors. Thus, DWW assumed the obligations it could, i.e., those that, in this case, were "ordinarily necessary for the uninterrupted continuation of normal business operations of the selling corporation." *Id*. Accordingly, because no genuine issue of material exists as to whether plaintiff established each element of the *Foster* test, the trial court did not err by imposing successor liability on DWW.

Affirmed.

/s/ Jane M. Beckering
/s/ Peter D. O'Connell
/s/ Douglas B. Shapiro