SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0980-16T1

REGINA LONGMUIR and
DOUGLAS A. LONGMUIR, JR.,

Plaintiffs-Respondents,

v.

KICKIN' IT, INC., n/k/a
ROCKY MARCIANO WORLD
FOUNDATION, INC., t/a
BULLYING... WE'RE KICKIN'
IT,

Defendants,

and

GINA MARIE RAIMONDO and
THOMAS RAIMONDO,

Defendants-Appellants.

Submitted January 9, 2018 – Decided April 17, 2018

Before Judges Sumners and Moynihan.

On appeal from Superior Court of New Jersey, Law Division, Monmouth County, Docket No. L-2868-14.

Garland & Mason, LLC, attorneys for appellants (Gary L. Mason, on the brief).

Vincent E. Halleran, Jr., attorney for respondent (Jeffrey R. Pocaro, on the brief).

PER CURIAM

Defendants Gina Marie Raimondo (G.M. Raimondo) and Thomas Raimondo (T. Raimondo) (collectively defendants) appeal from a July 19, 2016 judgment in the amount of $35,010[1] entered after a bench trial, and an October 31, 2016 order denying their motion for a new trial. On appeal they argue:

> [POINT I]
>
> THE TRIAL COURT'S VERDICT WAS AGAINST THE WEIGHT OF THE EVIDENCE AND REPRESENTS A CLEAR MISCARRIAGE OF JUSTICE.
>
> A. THE TRIAL COURT APPLIED THE WRONG BURDEN OF PROOF, WHICH CONSTITUTES REVERSIBLE ERROR AND MUST RESULT IN THE JUDGMENT BEING REVERSED.
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> B. THE TRIAL COURT DID NOT IDENTIFY ANY FACTS WHICH WOULD PROVE FRAUD, BY CLEAR AND CONVINCING EVIDENCE, FOR THE PURPOSE OF PIERCING THE CORPORATE VEIL AND HOLDING G.[M.] RAIMONDO AND T. RAIMONDO PERSONALLY LIABLE FOR [KICKIN' IT, INC.'S] DEBT.

We are constrained to reverse and remand this case because the trial judge applied the incorrect standard of proof.

[1] The court did not award attorneys' fees and court costs.

"Final determinations made by the trial court sitting in a non-jury case are subject to a limited and well-established scope of review." D'Agostino v. Maldonado, 216 N.J. 168, 182 (2013) (quoting Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011)). "[W]e do not disturb the factual findings and legal conclusions of the trial judge unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Seidman, 205 N.J. at 169 (quoting In re Tr. Created by Agreement Dated Dec. 20, 1961, ex rel. Johnson, 194 N.J. 276, 284 (2008)). To the extent that the trial court's decision constitutes a legal determination, we review it de novo. Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

Both parties in their merits briefs agree the trial involved the only remaining count of an amended complaint alleging fraud in the inducement. That allegation stems from two checks paid to Kickin' It, Inc.,[2] by plaintiffs totaling $35,010. The judge, after making extensive findings of fact, concluded the advanced funds were a loan that was not repaid to plaintiffs, and that it

[2] One check for $20,010 was payable to plaintiff, Douglas A. Longmuir, Jr.; the other for $15,000 was specifically endorsed to Kickin' It, Inc.

was not "an investment in the sense that the [plaintiffs] . . . expect[ed] anything other than to be paid their money back." In holding defendants liable for the loan, the judge was

> satisfied that [plaintiffs had] shown by a preponderance of the evidence that [defendants] were involved in a plan, the plan not to use [the] money specifically for Kickin[’] It, Inc., but the plan was to use this money to . . . fuel whatever expenses that the daughter, [G. M. Raimondo], may have incurred as a result of her pursuing this . . . tenuous business plan of hers, Kickin['] It, Inc.[3]

He further found "the money was used for [G.M. Raimondo's] own personal gain," and that T. Raimondo "should be held accountable," citing to evidence of his involvement in the business.

"[A] corporation is an entity separate from its stockholders. In the absence of fraud or injustice, courts generally will not pierce the corporate veil to impose liability on the corporate principals." Lyon v. Barrett, 89 N.J. 294, 300 (1982). "Although a corporation and its stockholders are usually treated as separate

[3] We do note that this and some other language in the judge's oral decision could lead to confusion as to the judge's determination. At one point he stated, "And the representations or the position of the plaintiff[s] is that, hey we gave this money over to [G.M. Raimondo], she said she had intentions on using this money to kick off her business." At another, he said, "I understand that this was a lousy business deal for [plaintiffs]." Although we do not believe, from an overall reading of the judge's decision, that the judge found plaintiffs' payment was an investment — not a loan — the judge can clarify that issue on remand.

entities, 'a court of equity is always concerned with substance and not merely form, and thus, it will go behind the corporate form where necessary to do justice.'" Hartford Fire Ins. Co. v. Conestoga Title Ins. Co., 328 N.J. Super. 456, 459 (App. Div. 2000) (quoting Walensky v. Jonathan Royce Int'l, Inc., 264 N.J. Super. 276, 283 (App. Div. 1993)). Courts will disregard corporate, legal singularity and hold individual principals liable if they use the corporation as their alter ego and abuse the corporate form in order to advance their personal interests. Sean Wood, LLC v. Hegarty Grp., Inc., 422 N.J. Super. 500, 517 (App. Div. 2011) (citing Casini v. Graustein, 307 B.R. 800, 811 (Bankr. D.N.J. 2004)). "[W]hen the corporate fiction is a mere simulacrum, an alter ego or business conduit of an individual, it may be disregarded in the interest of securing a just determination of an action." Coppa v. Taxation Div. Dir., 8 N.J. Tax 236, 249 (Tax 1986) (quoting Iron City Sand & Gravel Div. of McDonough Co. v. W. Fork Towing Corp., 298 F. Supp. 1091, 1098-99 (N.D.W. Va. 1969), rev'd on other grounds 440 F.2d 958 (4th Cir. 1971)).[4]

[4] In Coppa, two individuals purchased a boat in their corporation's name, 8 N.J. Tax at 239, and claimed they were exempt under the New Jersey Sales and Use Tax Act, N.J.S.A. 54:32B-1 to -55, because the boat was not purchased for personal use, and their company was a "distinct legal entity" with a "bona fide intention to conduct a chartering business," id. at 242-44. The court disregarded the corporate form, finding the individuals "continuously used the

The burden of proof is on the party seeking to pierce the corporate veil. Richard A. Pulaski Constr. Co. v. Air Frame Hangars, Inc., 195 N.J. 457, 472 (2008); Verni ex rel. Burstein v. Harry M. Stevens, Inc., 387 N.J. Super. 160, 199 (App. Div. 2006). That burden is by clear and convincing evidence. See United Food & Commercial Workers Union v. Fleming Foods E., Inc., 105 F. Supp. 2d 379, 388 (D.N.J. 2000) (quoting Kaplan v. First Options of Chicago, Inc., 19 F.3d 1503, 1521 (3d Cir. 1994)) (recognizing the equitable alter ego concept "should be utilized by the courts only on clear and convincing evidence[5] of 'fraud, illegality or injustice, or when recognition of the corporate entity would defeat public policy or shield someone from public liability for a crime,'" in an alter ego veil-piercing case). The issue is one for the factfinder, "unless there is no evidence

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vessel for their personal convenience and benefit for almost six years. This unity of ownership and unity of interest now militate against supporting the corporate fiction of [the corporation]." Id. at 248-49.

[5] Fraud must be proved by clear and convincing evidence. See Gennari v. Weichert Co. Realtors, 148 N.J. 582, 611 (1997) (affirming a finding of no common law fraud where trial court applied clear-and-convincing standard); Bears v. Wallace, 59 N.J. 444, 450 (1971) (stating that fraud must generally be proved by clear and convincing evidence); Pahy v. Pahy, 107 N.J. Eq. 538, 540 (E. & A. 1931) ("[F]raud is a fact that will never be presumed, but must always be clearly and convincingly proved.")

sufficient to justify disregard of the corporate form." Verni, 387 N.J. Super. at 199.

The judge, in applying the preponderance of the evidence standard, set plaintiffs' bar too low. We therefore remand the case, not for a new trial, but for a reapplication of the facts to the proper burden of proof. On remand, the court should separately consider whether plaintiffs have proved their cause of action on the sole remaining count, and then determine whether they met their burden to pierce the corporate veil. Because the application of the proper burden of proof may or may not result in the same findings of fact, we do not retain jurisdiction. The stay previously entered by the trial court is continued.

Remanded.