FILED
JUN 28 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

J. Q. MASTELLER AND INNS MANAGEMENT CO.,

Plaintiffs-Appellants,

vs.

EDDIE WEBSTER'S, INC.,

Defendant-Appellee.

Filed June 28, 1983

3-87
2-68707

Appeal from Polk District Court - Dick Strickler, Judge.

Plaintiffs (individual and corporation) appeal from the trial court's dismissal of their petition for damages in this breach of contract action. REVERSED AND REMANDED WITH INSTRUCTIONS.

William B. Serangeli and Gregory L. Biehler of Smith, Schneider & Stiles, P.C., Des Moines, Iowa, for plaintiffs-appellants.

Stephen C. Davis of Katz & Lange, Ltd., Minneapolis, Minnesota; and Richard D. Hermann of Hermann & Handley, Ankeny, Iowa, for defendant-appellee.

Considered by Oxberger, C.J., and Donielson, Snell and Schlegel, JJ. Hayden, J., takes no part.

PER CURIAM

Plaintiffs (individual and corporation) appeal from the trial court's dismissal of their petition for damages in this breach of contract action. Plaintiffs allege five specifications of trial court error: (1) by finding as fact that plaintiff Masteller retained a $12,000 deposit from Eddie Webster's; (2) by permitting defendant to amend its answer immediately prior to trial to add an additional affirmative defense requesting imputation of income from plaintiff Masteller to plaintiff Inns Management; (3) by ruling as a matter of law that plaintiff Masteller was the alter ego of plaintiff Inns Management and by imputing income earned by plaintiff Masteller to plaintiff Inns Management in mitigation of damages; (4) by concluding as a matter of law that plaintiffs failed to prove the breach of contract and damages allegations pled; and (5) by admitting into evidence as an exhibit the corporate minute book for plaintiff Inns Management. We reverse the judgment of the trial court and remand with instructions to enter judgment in favor of plaintiff corporation.

Plaintiff Inns Management is an Iowa corporation initially formed in 1974. During the time in question here, plaintiff Masteller was the president and sole stockholder of Inns Management. Defendant Eddie Webster's is a Minnesota corporation. Pursuant to a contract, Inns Management managed defendant's motel property in West Des Moines from September 1975 through February 26, 1979.

On February 26, 1979, the initial management contract was superseded by a new written contract between Inns Management and defendant. This new contract, which forms the basis of this action, provided that Inns Management was to receive a base management fee of $3,333.33 per month or $40,000 per year, prohibited cancellation to Inns Management without twelve months' written notice, allowed the retention of a $12,000 cancellation deposit pursuant to the initial management contract to be applied to the last year's base management fee, prohibited Inns Management and Masteller from managing any competing business

in Polk County, and provided that defendant would maintain Masteller's $500,000 life insurance policy.

In July 1979, defendant sold the West Des Moines motel. Defendant did not give notice of termination of the management contract and made no payments to Inns Management after July 1979. Although Inns Management apparently attempted to negotiate other contracts with other Des Moines businesses, it was unable to do so. Masteller, in his personal capacity, subsequently executed a management contract with the Hotel Fort Des Moines.

Inns Management and Masteller filed and subsequently amended a petition seeking $38,000 in damages for defendant's alleged breach of the management contract. Defendant answered, raising the affirmative defenses of waiver by discontinuance of performance, estoppel by breach of contract, justification, failure to mitigate damages, and failure of consideration. Just prior to trial plaintiff Masteller dismissed all personal claims as to damages, except for a $10,000 claim for failure to provide life insurance. Over plaintiffs' objection, trial court subsequently granted defendant's leave to amend its answer by adding as an affirmative defense that plaintiff Masteller's income from his Hotel Fort Des Moines job be imputed to plaintiff Inns Management in mitigation of damages.

During the course of trial considerable evidence regarding the finances of plaintiff Masteller were admitted into evidence over plaintiff's standing objection. Additionally, over plaintiff's lack of foundation objection, trial court admitted into evidence defendant's exhibit "H," the alleged corporate minute book of Inns Management.

Following a trial to the court, a judgment was entered dismissing plaintiffs' petition for failure to prove damages. Trial court specifically found that the $12,000 cancellation deposit had been retained by plaintiff Masteller and that defendant had paid the premiums on plaintiff Masteller's life insurance policy. The court concluded the defendant had breached the contract and that it was

obligated to pay to Inns Management $40,000 for twelve months after the date of breach; however, the court also concluded that Inns Management Company was the alter ego of plaintiff Masteller and the approximately $58,000 Masteller earned at the Hotel Fort Des Moines was therefore imputed to Inns Management, resulting in plaintiffs sustaining no damages. Inns Management filed this appeal.

I. The critical issue in this case is whether the trial court erred in concluding that Inns Management ("corporation") was the alter ego of plaintiff Masteller and that, therefore, the income earned by the latter subsequent to defendant's breach of the management contract should be imputed to the former in mitigation of damages. If the trial court erred in so concluding, then plaintiff corporation is entitled to damages for it is not disputed that defendant breached the contract by failing to give the required twelve-month notice of cancellation.

We begin our analysis by noting that a corporation is a distinct legal entity and is treated separately from its stockholder or stockholders under all ordinary circumstances. Appanoose County Rural Taxpayers Association v. Iowa State Tax Commission, 158 N.W.2d 176, 179 (Iowa 1968). In certain situations, however, the courts will pierce the corporate veil in order to find a legal identity between a corporation and the person or persons behind the corporation. This will be done only in exceptional cases; for example, where the corporation is a mere shell, serves no legitimate business purpose and is used mainly as an intermediary to perpetuate fraud or promote injustice. Northwestern National Bank of Sioux City v. Metro Center, Inc., 303 N.W.2d 395, 398 (Iowa 1981). It is well established that "mere identity of stock ownership and corporate management is not alone sufficient to permit a piercing of the corporate veil." Team Central, Inc. v. Teamco, Inc., 271 N.W.2d 914, 923 (Iowa 1978). A corporation's existence may be disregarded under the following circumstances:

> (1) the corporation is undercapitalized, (2) without separate books, (3) its finances are not kept separate from individual finances, individual obligations are paid by the corporation,

> (4) the corporation is used to promote fraud or illegality, (5) corporate formalities are not followed or (6) the corporation is merely a sham.

Lakota Girl Scout Council, Inc. v. Havey Fund-Raising Management, Inc., 519 F.2d 634, 638 (8th Cir. 1975).

Guided by these principles, we conclude that the trial court erred in holding that plaintiff corporation is the alter ego of Masteller. It is interesting to note that neither defendant nor the trial court relied on any of the Lakota factors in determining this issue. The sole argument appears to be that there was such an identity of interest, management and ownership between Masteller and the corporation that they should be regarded as one and the same. Assuming this to be true, this argument ignores the clear holding in the Team Central case that mere identity of stock ownership and corporate management is not enough to justify piercing the corporate veil. 271 N.W.2d at 923. There is no question that Masteller was the driving force behind the corporation and its operations. To hold, however, that this alone is sufficient to disregard the separate existence of Inns Management in this case would require the disregard of the separate existence of all one-shareholder, closely-held corporations. Defendant's argument proves too much.

Even if such an economic identity were sufficient to pierce the corporate veil, the record in this case would not allow a finding that the corporation was Masteller's alter ego. At various times in its existence, including the present, there have been other shareholders in the corporation besides Masteller. After defendant's termination of the contract, the corporation was engaged in a catering business while Masteller contracted in his personal capacity to manage the Hotel Fort Des Moines. In fact, the Hotel refused to contract with Inns Management; it would agree only to a contract for Masteller's personal services.

Defendant does not present, nor are we able to discover, any other basis upon which to find Inns Management to be Masteller's alter ego. The trial court

erred in piercing the corporate veil in this case. It follows, therefore, that the court erred in imputing Masteller's income from his personal contract with the Hotel Fort Des Moines to the corporation in mitigation of its damages from defendant's breach of the contract. See Sandler v. Lawn-A-Mat Chemical and Equipment Corp., 141 N.J. Super. 437, 358 A.2d 805 (1976).

II. Because Masteller's income from the Hotel Fort Des Moines should not have been imputed to the corporation, the trial court also erred in concluding that the corporation failed to prove its claim for damages. Defendant concedes, and the trial court found, that defendant breached the contract by terminating it without giving the required twelve-month notice of cancellation. Defendant does not disclaim liability. In the words of the trial court, defendant "was obligated to pay to Inns Management Company $40,000 for twelve months after cancellation, which in this case is twelve months after the breached contract by the owner." Contrary to the finding of the trial court, we think the record shows that the $12,000 cancellation deposit was retained by the corporation rather than by Masteller. Therefore, the corporation was damaged in the amount of $28,000 (damages under the contract less retained deposit) and is entitled to judgment in that amount.

III. Because of our holdings in Divisions I and II of this opinion, we need not consider the corporation's allegations regarding defendant's motion to amend its answer and the admission into evidence of the corporation's minute book. The judgment is reversed and the cause is remanded for entry of judgment in favor of plaintiff Inns Management in conformity with this opinion.

REVERSED AND REMANDED WITH DIRECTIONS.