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CLERK SUPREME COURT

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IN THE COURT OF APPEALS OF IOWA

INTERSTATE AIR CONDITIONING CORPORATION,	)	
Appellant,	)	Filed May 31, 1978
vs.	)	
LaVELLE DeHAAN and **SPECIAL BY-PRODUCTS,**	)	463 2-60397
Appellees.	)	

Appeal from Woodbury District Court - Lawrence W. McCormick, Judge.

Plaintiff appeals from judgment of trial court asserting the corporate veil should be pierced and shareholder held personally liable for goods and services supplied the corporation. - Reversed and remanded.

Craig A. Raby and Robert J. Crary, of Crary, Huff, Yates & Clem, Sioux City, for Appellant.

Larry J. Thorson, of Goldberg, Mayne, Probasco & Berenstein, Sioux City, and Wilford M. Forker and Paul A. Mahr, of Forker, Kanter & Mahr, Sioux City, for Appellees.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Plaintiff Interstate Air Conditioning Corporation appeals the trial court's decision entered in its action against defendants LaVelle DeHaan and Special By-Products, Inc. Plaintiff sells, installs and services air conditioning and refrigeration equipment. Defendant Special By-Products purchases and processes meat by-products for resale to pet food processors. Defendant company operates from a building leased to it and on land owned by defendant LaVelle DeHaan. Defendant DeHaan was also the incorporator, sole officer, director and shareholder as well as the guiding influence behind defendant Special By-Products.

In its petition, plaintiff sought damages against defendants on an open account for $10,211.83 for services and materials furnished to defendant Special By-Products. Plaintiff sought damages against DeHaan personally on the theory that the defendant corporation was in reality the alter ego of its incorporator, LaVelle DeHaan. Special By-Products itself was worthless, and plaintiff hoped that by piercing the corporate veil, it would be able to recover part, if not all, of its open account. Special By-Products filed a counterclaim alleging a loss of $67,500 as a result of failure of certain replacement equipment, sold by plaintiff, to properly operate and the subsequent loss of product due to spoilage.

The trial court found in favor of plaintiff against defendant Special By-Products for the amount prayed in the petition. The court also found in favor of defendant on its counter-claim but in the amount of $2800, which sum was to be allowed as a set-off against plaintiff's initial recovery of $10,211.83. The court found damages arose from spoilage which resulted from the "on again, off again" operation of the replacement Copeland compressors furnished by plaintiff.

However, the trial court failed to find there was sufficient reason to justify piercing the corporate veil to hold DeHaan personally liable. Although DeHaan failed to hold corporate meetings, failed to authorize corporate actions by resolution, paid some personal expenses with corporate funds and intermingled corporate and personal funds, the trial court found there was an absence of any showing of manipulation that would even approach bad faith, misrepresentation or fraud, either individually or on behalf of the corporation. The court held plaintiff's

dealings were with defendant corporation and not with DeHaan in her individual capacity.

Plaintiff's first assignment of error on review is that the corporate veil should have been pierced under the facts of this case so as to hold DeHaan personally liable for the outstanding debt. Findings of fact in a law action tried to the court have the effect of a special verdict and are binding upon the appellate court on review if supported by substantial evidence. Rules 4 and 14(f)(1), Rules of Appellate Procedure. However, we are not bound by the trial court's determination of the law or conclusions of law drawn from those facts as found by the trial court, Briggs Transp. Co. v. Starr Sales Co., 262 N.W.2d 805, 811-12 (Iowa 1978).

Central to corporate law is the concept a corporation is an entity separate from its owners. The separate corporate personality ordinarily enables corporate stock holders to limit their personal liability to the extent of their investment. Briggs, supra at 809 citing Krivo Industrial Sup. Co. v. National Distill. & Chem. Corp., 483 F.2d 1098, 1102 (5th Cir. 1973). But the corporate device cannot in all cases insulate the owners from personal liability. See generally 18 Am. Jur. 2d Corporations §§ 13-16 (1965). The corporate veil may be pierced under exceptional circumstances, for example, where the corporation is a mere shell, serving no legitimate business purpose, and used primarily as an intermediary to perpetuate fraud or promote injustice. Briggs, supra at 810; Newberry v. Barth, 252 N.W.2d 711, 714 (Iowa 1977).

In Lakota Girl Scout C., Inc. v. Harvey Fund-Rais. Man., Inc., 519 F.2d 634, 638 (8th Cir. 1975), the eighth circuit court of appeals applied Iowa law in reviewing a lower court's decision to pierce the corporate veil. Factors to be considered included whether:

(1) the corporation is undercapitalized,

(2) the corporation lacks separate books,

(3) its finances are not kept separate from individual finances, or 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 a mere sham.

519 F.2d at 638. See also Briggs Transp. Co. v. Starr Sales Co., 262 N.W.2d at 810; 1 W.M. Fletcher, Cyclopedia of the Law of Private Corporations § 41.3 (1974).

In the instant case, there is evidence that the corporation was inadequately capitalized from the beginning. The trial court found DeHaan borrowed $10,000 from the bank at the time of incorporation; she also authorized the bank to draw upon her children's accounts when the corporation was short of money. She borrowed money using the inventory as collateral and when she received payments from the company, the loans were paid off.

Special By-Products also lacked separate books. In fact, no records of corporate meetings including the initial meeting between the incorporators were produced. No records or resolutions authorizing corporate acts existed. The corporate records consisted of a recorded copy of the articles of incorporaton, a resolution authorizing payment of DeHaan's salary, the certificate of incorporation issued by the Secretary of State, two resolutions authorizing transactions with a bank, and a stock certificate about which there was no evidence of receipt by DeHaan. With the exception of these items there were no other minutes or corporate records for Special By-Products, Inc. Corporate formalities in their usual sense were not followed.

Although the finances of the corporation were kept separate, DeHaan did use corporate funds to pay some of her personal expenses. However, DeHaan's bookkepper testified that Special By-Products paid DeHaan rent and a salary of $350 per week. Any personal expenses paid by the corporation were denominated as such, and were charged against the rental and salary payments to DeHaan.

The two other factors cited by the courts in Lakota and Briggs were found not to exist by the trial court in the instant case. There was no evidence that the corporation was used to promote fraud or illegality. Neither was there any evidence that the corporation was a mere sham. Cf. Briggs Transp. Co. v. Starr Sales Co., 262 N.W.2d 805 (Iowa 1978).

Although the corporate veil may be pierced for these reasons, they are not, however, exclusive. Inadequacy of capital has been held to be a sufficient reason. Anderson v. Abbott, 321 U.S. 349, 64 S. Ct. 531, 88 L. Ed. 793 (1944). Treating

corporate accounts as though they were personal assets has been found to be good cause. Dudley v. Smith, 504 F. 2d 979 (5th Cir. 1974). See also Levenstein v. Sapiro, 279 So.2d 858 (Fla. 1973), on fraud not being a necessary element. In Briggs Transp. Co. v. Starr Sales Co., supra, the court held the vice president and treasurer personally liable even though she did not have an active part in the incorporation or business of the corporation. Nor was there any evidence that she had any part in the fraud committed by the other officers.

We are in accord with the findings of fact of the trial court regarding the operations of the corporation. However, we arrive at a different result in applying the law to those findings. The formalities and procedures by which a corporation is recognized as a separate legal entity were largely ignored by DeHaan. Nor were the corporate operations conducted in a manner that maintained the separate entity concept. Therefore we hold DeHaan is personally liable to plaintiff in the amount of $10,211.83.

The final two points raised by plaintiff on appeal concern certainty of proof of damages and whether acts or omissions of plaintiff were the proximate cause of defendant Special By-Product's loss of product. The trial court did not accept all of defendant's proof on the issue of spoilation. It specifically rejected, for lack of proof, damages for plant closure and product rejection by customers. The court did find there was some damage to product during the times freezing room No. 1 was partially shut down. This occurred each time one of the defective Copeland compressors had to be replaced. In total, there were between three and four weeks when that room was operated at three-fifths cooling capacity.

However, the trial court was not willing to accept as fact that all of the spoiled product resulted from plaintiff's actions in view of the fact new product was introduced into the room after some of the compressors burned out. Plaintiff claimed damages of $18,000 but the trial court limited damages to $2800.

Plaintiff also argues that defendant never proved the compressors were defective and that there was no reliance by defendant because of its failure to purchase a recommended compressor. The only distinction between the Copeland and Schnacke compressors is that the Copeland was hermetic while the Schnacke

was belt-driven. There was no evidence that the Copeland was inferior in quality. Defendant was never told the Copeland would not work. Defendants were unfamiliar with all but the general characteristic of refrigeration and relied on the expertise of plaintiff. There are no warranty disclaimers for plaintiff to rely on. Sections 554.2314-15, The Code. Finally, plaintiff admitted that tests of the replacement compressors showed they were defective when installed.

From review of the evidence we find substantial evidence to support the finding of damages of $2800 in defendant's favor, which shall be a setoff against plaintiff's judgment.

Reversed and remanded for entry of judgment consistent with this opinion.