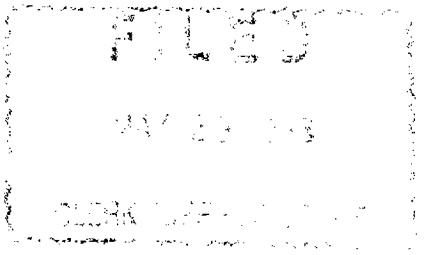
IN THE COURT OF APPEALS OF IOWA

No. 8-159 / 97-0869
Filed May 29, 1998

H & H DISTRIBUTING COMPANY, INC.,
Appellee,

vs.

JAMES E. HANSEN,
Appellant.



Appeal from the Iowa District Court for Cerro Gordo County, Jon Stuart Scoles, Judge.

Defendant appeals from a district court judgment entered against defendant for amounts owed to plaintiff by defendant's closely-held corporation. **AFFIRMED.**

M. Wayne Oltrogge of Oltrogge Law Office, Clear Lake, for appellant.

Les V. Reddick of Kane, Norby & Reddick, Dubuque, for appellee.

Heard by Huitink, P.J., Mahan, J., and Peterson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

HUITINK, P.J.

James E. Hansen appeals a district court judgment holding him personally liable for the debt H & H Distributing Company of Clear Lake (Clear Lake) owed to H & H Distributing Company, Inc. (West Union). We affirm.

I. Background Facts and Proceedings.

Hansen owns ninety-eight percent of the stock in Clear Lake and is the company's president. In 1992, the sole business activity of Clear Lake was wholesale food distribution. West Union was Clear Lake's only supplier. In September 1992, West Union discontinued business with Clear Lake due to a large outstanding balance on Clear Lake's account. Clear Lake discontinued operations on September 11, 1992.

West Union sued Clear Lake to recover the debt owed. On October 28, 1994, the district court found Clear Lake liable to West Union for $226,511.56, plus interest. On December 14, 1994, West Union seized $900.44 from Clear Lake's corporate checking account in an effort to execute its judgment. Clear Lake closed this account on December 19, 1994. Hansen subsequently used a personal checking account to pay Clear Lake's operating expenses.

After Clear Lake ceased doing business, the company made substantial loans to Hansen. Between September 16, 1992 and December 31, 1992, Clear Lake loaned Hansen $88,459.38. In February 1993, Clear Lake purchased seed corn for resale and then sold it to Hansen for use on his farm. The transaction was recorded on the company's books as a $14,151.74 loan to Hansen. These loans are not evidenced by

promissory notes or other similar documents. No interest rates or due dates were specified.

In November 1992, Hansen sold Clear Lake a combine for $25,000. The company then traded the combine for another combine with a purchase price of $145,000. The new combine was used exclusively on farms owned by Hansen. Hansen did not pay Clear Lake rent for use of the combine; however, in 1995, Hansen personally paid a contract installment of $20,462 to Case Implement. This amount was recorded as partial rent and a partial credit on Hansen's loan from Clear Lake.

Corporate tax returns in 1995 and 1996 show Hansen paid a total of $19,950 of Clear Lake's operating expenses from his personal account. Clear Lake credited Hansen's loan indebtedness for this amount, leaving a balance of $58,684.

West Union, unable to collect the remainder of its judgment, sued Hansen personally for the debts owed by Clear Lake. The district court pierced Clear Lake's corporate veil and held Hansen personally liable to West Union for $226,511.56, plus interest at the rate of ten percent per year from October 28, 1994.

On appeal Hansen argues the district court erred in disregarding Clear Lake's corporate structure and holding him personally liable for its corporate debts.

II. Standard of Review.

Since this action was tried as a law action, our review is for errors of law. Iowa R. App. P. 4. We are bound by the district court's findings of fact if they are supported by substantial evidence. Iowa R. App. P. 14(f)(1). Evidence is substantial

if a reasonable person would accept it as adequate to reach a conclusion, regardless of whether the evidence might support a different finding. *Cerro Gordo County v. Public Relations Bd.*, 395 N.W.2d 672, 675 (Iowa App.1986). However, this rule does not preclude inquiry into the question whether, conceding the truth of the facts found, a conclusion of law drawn therefrom is correct. We are not bound by the trial court's determination of the law. *Briggs Transp. Co. v. Starr Sales Co.*, 262 N.W.2d 805, 811 (Iowa 1978).

III. Piercing Clear Lake's Corporate Veil.

As a matter of agency law, a corporate officer is not ordinarily liable for a breach of contract by the corporation. *Bossuyt v. Osage Farmers Nat'l Bank*, 360 N.W.2d 769, 778 (Iowa 1985). However, a corporate entity may be disregarded under exceptional circumstances resulting in personal liability for a shareholder. *Ross v. Playle*, 505 N.W.2d 515, 517 (Iowa App. 1993). The corporate veil may be pierced where the corporation is a mere shell, an alter ego of its controlling owner which serves no legitimate business purpose. *See generally Northwestern Nat. Bank of Sioux City v. Metro Center, Inc.*, 303 N.W.2d 395 (Iowa 1981); *see Ross v. Playle*, 505 N.W.2d at 517 (stating exceptional circumstances warranting piercing the corporate veil are found when the corporate entity is a mere shell, and it is used to perpetuate fraud or promote injustice).

Factors the court may consider in determining whether to disregard a corporation's existence include whether: (1) the corporation is undercapitalized; (2) it

is without separate books; (3) its finances are not kept separate from individual finances; (4) individual obligations are paid by the corporation; and (5) corporate formalities are not followed. *Adam v. Mt. Pleasant Bank and Trust*, 355 N.W.2d 868, 872 (Iowa 1984). Continued corporate activity by shareholders following administrative dissolution may also result in personal liability. *Id.* at 873-74.

The district court held Hansen personally responsible for West Union's judgment against Clear Lake, finding the actions taken after Clear Lake discontinued operations constituted exceptional circumstances justifying piercing the corporate veil. The court reasoned Hansen left Clear Lake undercapitalized by withdrawing large amounts of cash from the company; formalities for executing promissory notes for Hansen's loans were not followed; Hansen used a corporate asset, the combine, without compensating Clear Lake for its use; and Clear Lake paid a personal debt of Hansen's to Boatmen's Bank. The court concluded the foregoing transactions were intended to deprive West Union of the value of its judgment by depleting Clear Lake's assets.

We find substantial evidence supports the district court's decision to disregard Clear Lake's corporate entity. Clear Lake continued to make substantial loans to Hansen after it ceased business operations. Clear Lake also paid Hansen's personal debt to Boatmen's Bank, recording the transaction as a loan. After Clear Lake's checking account was closed, Hansen commingled his personal funds with company funds by paying Clear Lake's operating expensess from his personal account. As

stated above, formalities were not followed to memorialize these loans. Hansen's manipulation of Clear Lake's finances after the company ceased business relations was intended to deplete company assets for purposes of avoiding payment of West Union's judgment. *See Boyd v. Boyd & Boyd, Inc.*, 386 N.W.2d 540, 543 (Iowa App. 1986).

The judgment of the district court is affirmed.

AFFIRMED.