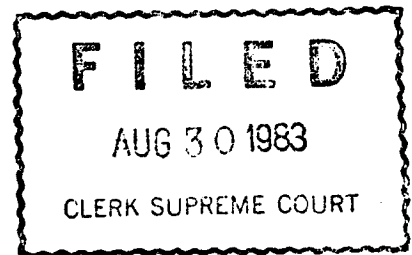


IN THE COURT OF APPEALS OF IOWA



**ROBERT L. PEPPERS and HOLLY
PEPPERS,**)

Plaintiffs-Appellees,)

vs.)

JOSEPH A. ANDREWS,)

Defendant-Appellant.)

Filed August 30, 1983

**JOE ANDREWS WRECKING
SERVICE, INC.,**)

Plaintiff,)

vs.)

**ROBERT L. PEPPERS and HOLLY
PEPPERS,**)

Defendants.)

3-73
2-68086

Appeal from Scott District Court - James R. Havercamp, Judge.

Defendant appeals from a judgment holding him personally liable for damages resulting from an alleged breach of contract and conversion of plaintiffs' property. AFFIRMED.

W. Michael Shinkle, Davenport, for defendant-appellant.

A. Fred Berger and H. J. Dane of Berger and Lane, Davenport, for plaintiffs-appellees.

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

DONIELSON, J.

Defendant appeals from a judgment holding him personally liable for damages resulting from an alleged breach of contract and conversion of plaintiffs' property. We affirm.

The present dispute arose during the collapse of an attempt by defendant to sell his business to plaintiffs. Plaintiffs, who operate a wrecker service, engaged in extended negotiations with defendant and his wife, co-owners and officers of an incorporated wrecker service, for the sale of defendant's business to plaintiffs. Defendant and his wife were having marital difficulties and defendant's conduct during the period appears to have been erratic. The parties were unable to reach a conclusive agreement for the sale by the time specified for closing. Defendant threatened to close down his business altogether, apparently in an attempt to reconcile with his wife, but was persuaded to agree instead to allow plaintiffs to manage it on salary. From October 6, 1977, through October 28, 1977, plaintiffs managed the business. The business was evidently operated jointly with the plaintiffs' existing business, and disentangling the two operations is complex.

On October 28, 1977, defendant, upset that plaintiffs had not made a bank payment on a loan secured by business equipment, padlocked the business. It appears, however, that it was defendant's obligation to make the bank payment. In any event, the lockdown deprived plaintiffs of use of certain of their own property which was on the premises.

The plaintiffs sued defendant Joseph Andrews personally for money they claimed they were owed for management of defendant's business, for certain expenses incurred in doing so, and for the personal property defendant allegedly refused to return. Subsequently, Joe Andrews Wrecking Service, Inc. sued the Peppers in a separate action for damage allegedly done to the corporation's property while the Peppers were managing the business and for missing corporate property. The cases were consolidated for trial.

The trial court found that defendant's business and personal affairs were much intertwined, and appears to have held that the corporate veil of Joe Andrews Wrecking Service, Inc., should be pierced. The words "pierce the corporate veil" are not used, but the court's discussion of the issue, taken as a whole, supports the conclusion that that is what the court was doing. The trial court also noted that plaintiffs' cause of action was partly predicated on the tort of conversion, and held that defendant is always personally liable for tortious acts committed by him.

The court awarded plaintiffs \$12,232 in damages against defendant. In the consolidated suit brought by Joe Andrews Wrecking Service, Inc., the court awarded the wrecking service \$1,390. The court offset the wrecking service's judgment against the plaintiffs' judgment against Andrews personally in their suit, leaving a net judgment in favor of the Peppers of \$10,842.

On appeal, defendant asserts that the trial court abused its discretion by "piercing the corporate veil" of defendant's corporation, Joe Andrews Wrecking Service, Inc., and holding him personally liable for breach of contract and the tort of conversion. Plaintiffs respond, inter alia, that a portion of the judgment was based on a finding of individual tort liability for acts personally done by defendant, the imposition of which does not require piercing the corporate veil.

I.

The central issue raised by defendant is whether the trial court erred by finding that Joe Andrews Wrecking Service, Inc. was the alter ego of defendant, and that therefore defendant is personally liable for damages. Defendant does not deny the substance of plaintiffs' allegations, but contends that the corporation is the proper party-defendant.

A corporation is a legal, albeit artificial, person. It is an entity which is distinct from its shareholders, officers, directors and employees. Wyatt v.

Crimmins, 277 N.W.2d 615, 616 (Iowa 1979). The corporate entity ordinarily enables owners to limit their personal liability for corporate activities to the extent of their investment, however "the corporate device cannot in all cases insulate the owners from personal liability." Briggs Transport Co. v. Starr Sales Co., 262 N.W.2d 805, 809-10 (Iowa 1978).

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 National Bank of Sioux City v. Metro Center, Inc., 303 N.W.2d 395 (Iowa 1981). Fraud is not a prerequisite for piercing the corporate veil. Team Central, Inc. v. Teamco, Inc., 271 N.W.2d 914, 923 (Iowa 1978). The factors which may be considered in determining whether a corporation is merely the alter ego of its controlling owner were set out in Lakota Girl Scout Council, Inc. v. Harvey Fund Raising Management, Inc., 519 F.2d 634, 638 (8th Cir. 1975). A corporation's existence may be disregarded if:

- (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. (emphasis added).

Id. at 638.

Guided by the foregoing principles, we hold that the trial court did not err when it pierced the veil of defendant's corporation and held him personally liable. There is ample evidence to support the trial court's finding that defendant did not keep his personal finances separate from those of the corporation. The corporation was formed with assets secured by a second mortgage on defendant's home. More important, in subsequent years defendant obtained no fewer than four personal loans from a Bettendorf bank which were secured by assets belonging to the corporation. There is also ample evidence to support the trial court's finding that defendant and his wife "treated the corporation as their personal property

and business, without much regard for its corporate entity."

II.

Plaintiffs' claim is primarily predicated on allegations of tortious conduct. Even if the corporate veil could not have been pierced, the trial court correctly pointed out that the corporate entity cannot shield its owners or officers from personal liability for torts they commit. A corporate officer is personally liable for torts which he commits, or which he authorizes or directs within the scope of his employment. Grefe v. Ross, 231 N.W.2d 863, 868 (Iowa 1975). The scope of this rule is not limited to torts involving fraud, as defendant alleges; the rule applies to torts generally. See State v. Civic Action Committee, 28 N.W.2d 467, 471 (Iowa 1974). Specifically, the rule has been held to apply in cases where the tort is one of conversion. Luther v. National Investment Co., 222 Iowa 305, 308-309, 268 N.W. 589 (1936); see generally Walker v. Howell, 209 Iowa 823, 226 N.W. 85 (1929).

III.

For the reasons set out in divisions I and II of this opinion, we hold that the trial court did not err in finding defendant personally liable to plaintiffs for the contractual obligations of the corporation and for defendant's own tortious conduct. The trial court's judgment is therefore affirmed.

AFFIRMED.