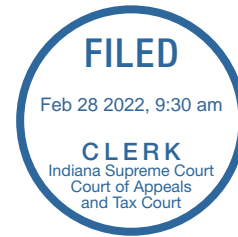


OPINION ON REHEARING



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IN THE COURT OF APPEALS OF INDIANA

Sjon Martin,
Appellant-Plaintiff,

v.

Joe Krise, Tina Krise, Top
Quality Professional
Construction, LLC,
Appellee-Defendants.

February 28, 2022

Court of Appeals Case No.
21A-SC-1337

Appeal from the Washington
Township Small Claims Court

The Honorable Steven G. Poore,
Judge

Trial Court Cause No.
49K07-2011-SC-2011

Mathias, Judge.

[1] Appellant Martin, by counsel, has filed a petition for rehearing. He raises the following two claims of error:

1. Whether our published decision was dispositive of all the material issues raised as error on appeal; and

2. Whether we erred in significantly misquoting a particular passage of his brief, resulting in a gross mischaracterization of Martin's argument.

[2] We consider each claim in order.

Whether our decision was dispositive of all the material issues raised as errors on appeal.

[3] Martin claims that our opinion failed to address “the Trial Court’s significant departure from the trial rules.” Pet. for Reh’g, p. 10. Specifically, he believes that he is entitled to a default judgement against Tina Krise because she failed to appear.

[4] Applying [Indiana Small Claims Rule 10\(B\)](#), Tina Krise did not need to appear, and, quite properly, she was not defaulted. Martin chose to do business and contract with Top Quality Professional Construction, LLC (the LLC). The substantive law of the State of Indiana (and all states) shields principals and employees of a limited liability company from individual liability for the actions or failures of the company. Once Martin signed the “Proposal” with the LLC, the LLC, not Joe or Tina Krise individually, then became responsible to Martin to complete the fence installation. The Proposal Martin signed was executed by Joe Krise as a representative of the LLC, not by Joe Krise individually. While the record shows that Tina may have interacted with Martin at times, she is not liable for the action or inaction of the LLC. Therefore, her appearance was not

required as a matter of substantive law and entry of default judgement against her would have been improper.

[5] In addition, the last requirement of [Indiana Small Claims Rule 10\(B\)\(4\)](#) requires that “[t]he plaintiff [Martin] has a prima facie case” against the defendant. Our review of the transcript clearly shows that Martin did not have a prima facie case against either of the Krises individually. As indicated in the first footnote to our original opinion, individual liability might be established in proceedings supplemental to judgment but was not present at the time of the hearing.

[6] Martin’s next claim of “a significant departure from the trial rules” is that the trial court proceeded with the trial without requiring the LLC to hire an attorney. In support of his claim, he cites [Indiana Small Claims Rule 8\(C\)\(3\)](#), which would seem to require that the LLC hire an attorney. Martin made no such claim in his trial proceedings and he has waived this claim by making it for the first time on appeal.

Whether we erred in “significantly” misquoting a particular passage of Martin’s brief, resulting in a gross mischaracterization of his argument.

[7] The particular passage of Appellant’s brief Martin claims was “significantly misquot[ed]” is shown below.

One must rhetorically ask how a plaintiff, who is a buyer in a contractual relationship with a defendant, would be able to prove undercapitalization, absence of corporate records, fraudulent representation, use of the corporation to promote fraud, commingling of assets and affairs, failure to observe required formalities, ignoring or manipulating the corporate form, and the like, if the Plaintiff has no access to the Defendant who might employ the corporate veil as a shield to liability.

Appellant's Br. p. 15. Our language on the issue raised in this passage was:

Martin concedes in his brief that he is unable to make the required showing; he invites us to 'ask how a plaintiff, who is a buyer in a contractual relationship with a defendant, would be able to prove undercapitalization absence of corporate records, fraudulent representation, use of the corporation to promote fraud, commingling of assets and affairs, failure to observe required formalities, ignoring or manipulating the corporate form, and the like.'

Op. p. 6. This language captures the issue contained in Martin's rhetorical question, namely, how was he to prove the evidence needed to pierce the corporate veil without access to Joe Krise? Once again, the answer is found in the first footnote to our original opinion: through proceedings supplemental.

[8] For all of these reasons, Martin's petition for rehearing is granted for the limited purpose of responding to appellant's petition for rehearing.

Bailey, J., and Altice, J., concur.