ATTORNEY FOR APPELLANT

Eric C. Lewis
Lewis Legal Services, P.C.
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Sjon Martin,
Appellant-Plaintiff,

v.

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

December 15, 2021

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] Sjon Martin filed a notice of claim in the Washington Township Small Claims Court alleging that his contract with Top Quality Professional Construction, LLC, was breached. Following a bench trial, the trial court concluded that the company had breached the contract, and the court entered judgment in favor of Martin, awarding him $3,000.00 in damages, plus pre- and post-judgment interest. Martin now appeals, arguing that the court erred in declining to hold

Top Quality Construction, LLC's two individual members, Joe and Tina Krise, personally liable for the breach.

[2] We affirm.

Facts and Procedural History

[3] Top Quality Professional Construction, LLC ("Top Quality"), is an Indiana limited liability company. Its two individual members are Joe Krise and Tina Krise. Tr. pp. 9, 31, 35. On September 24, 2020, Martin entered a contract with Top Quality for the installation of a chain-link fence at Martin's residence. *Id*. at 17; Ex. Vol. p. 7. Pursuant to the contract, Top Quality agreed to furnish the materials and labor necessary for completing the job, and, in exchange, Martin agreed to pay $4,600. Ex. Vol. p. 7.

[4] Joe Krise visited Martin's residence to take measurements and to make preparations for installing the fence. Tr. p. 3. That same day, Martin paid a $3,000 deposit toward the contract price by way of a check made payable to "Top Quality Professional Construction LLC." Ex. Vol. p. 4.

[5] For several weeks after that, Martin did not hear from Top Quality. By early November, no one from Top Quality had returned to Martin's home to install the fence. Tr. pp. 14–15, 22. Top Quality never refunded Martin's deposit. So, on November 12, Martin filed a notice of claim in the Washington Township Small Claims Court alleging that his contract with Top Quality had been breached. Appellant's App. pp. 9–12.

[6] On February 24, 2021, the court held a bench trial via Webex, at which both parties appeared. On June 1, following the trial, the court found that Top Quality had breached its contract with Martin. The court entered judgment in favor of Martin and awarded him $3,000 in damages, plus pre- and post-judgment interest. Appellant's App. pp. 6–8.

[7] Martin now appeals.

Discussion and Decision

[8] We note at the outset that neither Top Quality, Joe Krise, nor Tina Krise have filed an appellee's brief. "When the appellee has not filed a brief, we apply a less stringent review." *Wells Fargo Bank, N.A. v. Hallie*, 142 N.E.3d 1033, 1037 (Ind. Ct. App. 2020) (quoting *Trisler v. Carter*, 996 N.E.2d 354, 356 (Ind. Ct. App. 2013)). That is, "the appellant need only demonstrate prima facie reversible error to justify a reversal." *Id.* Prima facie error in this context is "error at first sight, on first appearance, or on the face of it." *Id.*

[9] Martin argues that the trial court erred in declining to pierce Top Quality's corporate veil, and in turn, in declining to attribute personal liability for the breach of his contract to Joe and Tina Krise, the limited liability company's two members. However, even under our less-stringent standard of review, Martin has not demonstrated prima facie error, and his argument is therefore unavailing.

[10] "The purpose of a limited liability company is to provide individuals the same protection enjoyed by shareholders of a corporation through creation of a

distinct legal entity." *Pazimo v. Bose McKinney & Evans, LLP*, 989 N.E.2d 784, 786 (Ind. Ct. App. 2013). Thus, as a general rule, members, managers, or agents of a limited liability company are not personally liable for the acts of the limited liability company. *Cf.* *Reed v. Reid*, 980 N.E.2d 277, 301 (Ind. 2012) ("As a general rule, shareholders are not personally liable for the acts of a corporation.").

[11] Indeed, the Indiana Business Flexibility Act, which controls the creation and operation of limited liability companies in Indiana, provides:

> A member, a manager, an agent, or an employee of a limited liability company is not personally liable for the debts, obligations, or liabilities of the limited liability company, whether arising in contract, tort, or otherwise, or for the acts or omissions of any other member, manager, agent, or employee of the limited liability company.

Ind. Code § 23-18-3-3.

[12] In some instances, however, "courts will not provide the protection of limited liability to an entity that is a mere instrumentality of another and engages in misconduct in the function or use of the corporate form." *CBR Event Decorators, Inc. v. Gates*, 962 N.E.2d 1276, 1281–82 (Ind. Ct. App. 2012). Courts may invoke the equitable doctrine of piercing the corporate veil "in order to protect innocent third parties from fraud or injustice," or if the corporate entity "is functioning as an alter ego or a mere instrumentality of an individual." *Reed*, 980 N.E.2d at 301.

[13] Importantly, the appropriateness of piercing the corporate veil "is highly dependent of the equities of the situation." *Id*. "Courts are reluctant to disregard corporate identity and do so only where the party seeking to pierce the corporate veil can establish that the corporate form has been misused and the result of that misuse is fraud or injustice." *CBR Event Decorators,* 962 N.E.2d at 1281. Simply stated, the party seeking to pierce the corporate veil bears the burden of establishing that the corporate form was so ignored, controlled, or manipulated that it was merely an instrumentality of another and that the misuse of the corporate form would constitute a fraud or promote injustice. *Id.* at 1282.

[14] To determine whether the party seeking to pierce the corporate veil has met this burden, courts consider whether the party has presented evidence demonstrating: (1) under capitalization; (2) absence of corporate records; (3) fraudulent representation by corporation shareholders or directors; (4) use of the corporation to promote fraud, injustice, or illegal activities; (5) payment by the corporation of individual obligations; (6) commingling of assets and affairs; (7) failure to observe required corporate formalities; or (8) other shareholder acts or conduct ignoring, controlling, or manipulating the corporate form. *Reed*, 980 N.E.2d at 302; *see also Blackwell v. Superior Safe Rooms LLC*, 174 N.E.3d 1082, 1092, 1093 (Ind. Ct. App. 2021).

[15] Martin made no such showing at trial.[1] He casually complains that "the way in which the trial was conducted was itself not conducive to allowing a meaningful opportunity for a highly fact-sensitive inquiry" into the above-listed factors, Appellant's Br. at 18, but Martin does not contend that he was denied an opportunity to present evidence to the trial court. It was Martin's burden—not the trial court's—to put forth evidence demonstrating the propriety of piercing the corporate veil. Our review of the record reveals that Martin presented no such evidence, and he has not directed us to any.

[16] Instead, 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." Appellant's Br. at 15. Though needless to say, we note that it is Martin and his counsel's task to determine how to meet his evidentiary burden—not ours.

[17] Having presented no evidence in support of his request to pierce Top Quality's corporate veil, Martin has failed to demonstrate that the trial court committed prima facie error in attributing liability to Top Quality—the limited liability

[1] We note that these facts can also be learned and proved through discovery in proceedings supplemental, unless or until the LLC files bankruptcy.

company with whom he entered the fence-installation contract—rather than holding the company's two members, Joe and Tina Krise, personally liable.

Conclusion

[18] For all of these reasons, we conclude that the trial court did not err in holding Top Quality Professional Construction, LLC, rather than Joe and Tina Krise, liable for breaching the contract.

[19] Affirmed.

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