ATTORNEY FOR APPELLANT

R. C. Richmond III
Taft Stettinius & Hollister LLP
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

B.J. Brinkerhoff
Alexandra J. Blackwell
Hannah K. Joseph
Jeselskis Brinkerhoff and Joseph LLC
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Craig Blackwell,

Appellant-Plaintiff,

v.

Superior Safe Rooms LLC, Michael M. Wharff, Wharff Excavating, LLC, John H. Byers, Jr.,

Appellees-Defendants.

July 7, 2021

Court of Appeals Case No. 20A-PL-2081

Appeal from the Hendricks Circuit Court

The Honorable Daniel Zielinski, Judge

Trial Court Cause No. 32C01-1705-PL-60

Bailey, Judge.

Case Summary

[1] Craig Blackwell ("Blackwell") and Superior Safe Rooms, LLC ("Superior"), entered into a written proposal for Superior to sell a safe room to store valuables and serve as a storm shelter to Blackwell and install it in his residence. Blackwell subsequently sued Superior for breach of contract and obtained a default judgment against Superior due to its failure to comply with an order compelling it to respond to Blackwell's discovery requests. Blackwell filed motions for proceedings supplemental and ultimately added as garnishee defendants Wharff Excavating, LLC ("Wharff Excavating"), Michael M. Wharff ("Wharff"), and John H. Byers ("Byers") (collectively, "Garnishee Defendants"[1]). Blackwell now appeals the trial court's denial of his Motion to Pierce Judgment Defendant's Corporate Veil and Hold Garnishee Defendants Liable for Plaintiff's Judgment. The only issue is whether the trial court clearly erred when it refused to disregard Superior's corporate form and hold Garnishee Defendants liable.

[2] We reverse.

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[1] On appeal, Blackwell does not pursue any claim against Byers. Therefore, this decision refers only to Wharff and Wharff Excavating when it refers to "Garnishee Defendants."

Facts and Procedural History

[3] In June of 2015, Wharff met with Blackwell at the latter's home and the two men discussed the installation of a safe room in Blackwell's home. During that discussion, Blackwell asked Wharff "who would be performing the work on the job and/or if there would be any subcontractors performing the work, [and] Wharff advised Blackwell that Wharff Excavating would be performing the work." Appealed Order at 1-2. On July 9, 2015, Superior issued to Blackwell a one-page document entitled "Proposal" (hereinafter, "the Contract") for a "Gun Safe Room Installation." Ex. v. 3 at 77. Wharff had an employee of Wharff Excavating prepare the Contract and send it to Blackwell. The top left corner of the Contract contains the following:

> Superior Safe Rooms
> 7869 David Ct.
> Brownsburg, IN 46112
> 317-892-0074
> Fax 317-892-0074
> Wharffexcavating@yahoo.com

Id. The address documented on the Contract for Superior is the same as Wharff's home address at the time. The Contract contains no reference to Wharff Excavating other than in the email address listed for Superior.

[4] Blackwell accepted the Contract, and Wharff received a check for $20,000 as a down payment on the safe room project. The check was dated July 21, 2015,[2] made out to Wharff Excavating, signed by Vivian Blackwell—Blackwell's wife—and drawn on Blackwell's and his wife's joint bank account.

[5] Wharff Excavating performed all the work on Blackwell's safe room project, and its workers' shirts, equipment, and trucks all contained Wharff Excavating's logo. However, all work on the project was suspended before its completion. On May 11, 2017, Blackwell filed a Complaint against Superior for, among other claims, breach of contract.[3] On June 23, 2017, Superior filed a timely Answer in which it admitted that "Blackwell hired Superior to install and finish a water- and fire-proof safe room." Ex. v. 3 at 54; Appellant's App. at 25. Superior also filed a counterclaim against Blackwell for breach of contract in which it alleged, "In July of 2015, Blackwell and Superior Safe Rooms, LLC ("Superior") entered into a contract (the "Contract") whereby Superior would install a safe room in Blackwell's [home] in return for the payment of $28,975.00 (the "Project")." Ex. v. 3 at 59.

[6] On May 17, 2018, Blackwell served upon Superior its First Request for Admissions. Superior failed to timely respond and, on August 31, 2018,

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[2] The appealed trial court order contains a typographical error in finding number 8 where it states that the check was issued to Wharff Excavating on July 21, 2019. Appealed Order at 2.

[3] Blackwell also made several statutory claims against Superior; however, each such claim was premised on the existence of the agreement between Blackwell and Superior for the sale and installation of a safe room.

Blackwell filed a Motion for Summary Judgment in which he asserted that his Request for Admissions were deemed admitted due to Superior's failure to file a timely response. On November 1, 2018, Superior filed a response to the motion for summary judgment and a motion to withdraw its admissions. Superior also filed an affidavit by Wharff in opposition to Blackwell's summary judgment motion. In his affidavit, Wharff swore that "[a]t all applicable times," he was "a duly authorized representative for Superior Safe Rooms, LLC." Ex. v. 3 at 43. Wharff further swore that Superior and Blackwell "entered into an agreement for a Gun Safe Room installation" based on the Contract, and he attached the same to his affidavit. *Id*. On November 7, 2018, the trial court granted Superior's motion to withdraw its admissions and denied Blackwell's motion for summary judgment.

[7] On March 25, 2019, Blackwell served upon Superior a document entitled "Plaintiff's Second Request for Production of Documents." *Id*. at 9; Cause No. 32C01-1705-PL-60, Motion to Compel Exhibit 1 – Second Request for Production.[4] That discovery request sought Superior's business records, such as tax documents, balance sheets, profit/loss statements, financial statements, bank accounts, documents "relative to any and all partners, members, owners

[4] Although this document is not contained in the record transmitted to the Court on appeal, it is nevertheless part of the record. Ind. Appellate Rule 27. The document is accessible via Odyssey, the Indiana case management computer system.

We were unable to locate within the record any documents purporting to be Plaintiff's "First" Requests for Production of Documents other than documents filed during proceedings supplemental. Ex. v. 3 at 6-21, 61-76.

… in any business entity in which Superior has an interest…," and documents "demonstrating a complete description and history of the business operations, including the nature of its products, product lines, and/or service pertaining to Superior." *Id.* On April 11, 2019, Blackwell also served on Wharff Excavating a Non-Party Subpoena for Production of Documents.

[8] Because Superior failed to respond to Blackwell's March 25 discovery request and informal attempts to compel a response, on May 15, 2019, Blackwell filed a Motion to Compel Superior's response. And because Wharff Excavating also failed to respond to Blackwell's Non-Party Subpoena, Blackwell also filed a motion to compel Wharff Excavating's response. The trial court granted Blackwell's motions and issued orders compelling Superior's and Wharff Excavating's discovery responses. Superior and Wharff Excavating failed to respond to Blackwell's discovery requests as ordered by the court. On June 7, 2019, Blackwell filed a motion requesting that the trial court issue a sanction of default judgment against Superior. On June 26, 2019, the trial court granted Blackwell's motion and issued an order entering default judgment against Superior on all counts of Blackwell's complaint and dismissing Superior's counterclaim. The trial court also granted Blackwell's subsequent motion for damages in the amount of $161,625.52.

[9] On October 17, 2019, Blackwell filed a Motion for Proceedings Supplemental, and a hearing was held on the motion on December 17, 2019. Wharff and Byers—who is Wharff's father-in-law—both appeared at the hearing. Wharff testified that he had been "operating" Superior since its formation in 2012 and

thought he was an owner and member of Superior until Byers informed him otherwise in approximately September of 2019. Ex. v. 4 at 4. In fact, Byers was and always had been the sole owner and member of Superior. Wharff testified that Superior conducted no business, had no employees, had no physical place of business, had no equipment other than a pickup truck,[5] had no income, and filed no tax returns. Superior had a bank account on which Wharff, Wharff's wife, and Byers were signatories. Superior was "just set up for convenience basically as a name to draw attention" to Wharff Excavating, which actually sold and installed the safe rooms. *Id*. at 7. Byers was named as the sole member of Superior "for convenience." *Id*. at 3. Similarly, Superior's website was created "to draw attention" and "direct business to" Wharff Excavating. *Id*. at 6.

[10] On March 3, 2020, Blackwell filed a second motion for proceedings supplemental in which he added Wharff, Wharff Excavating, and Byers as garnishee defendants. On the same day Blackwell filed a Motion to Pierce Judgement Defendant's Corporate Veil and Hold Garnishee Defendants Liable for Plaintiff's Judgment. On July 7, 2020, Blackwell took the depositions of Wharff and Byers. Wharff testified that he formed Wharff Excavating as a sole proprietorship in 2004 and, in 2011, changed it to a limited liability company. Wharff was, and always had been, the sole member of Wharff Excavating,

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[5] Wharff bought the pickup truck from Byers and "believe[d] that it's still in Superior's name." *Id*. at 10. In response to the question whether Superior owned anything other than the pickup truck, Wharff stated, "No, I don't own any other property … so they [i.e., Superior] wouldn't either." *Id*. at 11.

LLC. Wharff Excavating originally did drainage and grading work and water and sewage line repair. In 2006, Wharff Excavating began to sell and install safe rooms as a small percentage of its business. Byers did some office work for Wharff Excavating for which he was compensated.

[11] Sometime in 2012, Byers formed Superior with the intention that it would market, design, and sell safe rooms that Wharff Excavating would then build. However, Superior never did any business at all other than entering into the Contract with Blackwell in 2015.[6] In the years 2014 through 2020, Superior's accountant filed Business Entity Reports for Superior with the Indiana Secretary of State. Those records listed Wharff or Superior's accountant as Superior's registered agents and listed Wharff's home address as Superior's address. Superior had no documents related to its capitalization other than its one bank account opened by Wharff and on which Byers, Wharff, and Wharff's wife were signatories.

[12] At his July 7, 2020, deposition, Wharff testified for the first time that the Contract was not between Blackwell and Superior, but between Blackwell and Wharff Excavating. Wharff also testified for the first time that Blackwell "hand wrote a check … for $20,000" and handed it to Wharff at the June 2015 meeting between Blackwell and Wharff at Blackwell's house. Ex. v. 4 at 50. However, Wharff acknowledged that the one and only check—contained in his

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[6] Although Byers stated that "Superior" designed one safe room, he admitted that was done before Superior was formed.

deposition Exhibit 19, *id*. at 218—was dated July 21, 2015, made out to Wharff Excavating, and signed by Virginia Blackwell, Blackwell's wife.

[13] At Byers's July 7 deposition, he testified that he drafted Superior's Articles of Organization and was its sole member; however, he was unaware of Blackwell's lawsuit against Superior until after the judgment had been entered. He stated that Superior never did any business and never had any income. He stated that he never "capitalized" Superior, and that he thought Wharff created Superior's only bank account and deposited into that account "whatever the minimum [amount] was" to start an account. Ex. v. 4 at 120. Byers never put any money into Superior's bank account, and he did not receive or review the account statements; those were sent directly to Wharff. Byers was not aware of the contents of Superior's most recent website until the morning he was deposed, i.e., July 7, 2020.

[14] The hearing on the second motion for proceedings supplemental was held on July 21, 2020. At that hearing, the transcripts of Wharff's and Byers's depositions and the deposition exhibits were admitted into evidence without objection. Exhibit 20 was Superior's bank account records consisting of Superior's bank statements from February of 2015 through September of 2019. The bank account had a balance of approximately $300 in February of 2015. No deposits or withdrawals were made to the account thereafter, but the bank charged the account with inactivity fees beginning in February of 2016. By the time the account was closed in August of 2019, it had a total balance of $79.21. The address listed on Superior's bank account statements was Wharff's home

address until March of 2018, at which point the address was changed to 645 N. Green Street, Brownsburg, IN 46112, which is Wharff Excavating's business address.

[15] At the July 21 hearing, Wharff testified that Blackwell had emailed persons at Wharff Excavating about his safe room project, and copies of those emails were admitted into evidence. The email address to which Blackwell directed his correspondence was wharffexcavating.office@yahoo.com; the email address listed for Superior on the Contract was wharffexcavating@yahoo.com.

[16] On October 15, 2020, the trial court issued its "Findings of Fact, Conclusions of Law and Order" per Blackwell's motion for such findings. The trial court's findings included a finding that "Blackwell issued a check to Wharff Excavating as down payment on the project for $20,000." Appealed Order at 2. The order also included the following "Conclusions of Law":

> 8. There was no indication that Garnishee Defendants used Superior to shield [themselves] from liability. Wharff Excavating employees did the work on the project, and Wharff Excavating paid for the materials on the project.
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> * * *
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> 10. Blackwell presented no evidence that any of the *Aronson vs. Price*, 644 N.E.2d 864, 867 (Ind. 1994) factors **CAUSED** Blackwell's damages.
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> 11. Wharff expressly advised Blackwell that Wharff Excavating would be on sight [sic] performing the work,

and Blackwell was not misled as he issued payment by personal check made out to Wharff Excavating.

12. Wharff could have been named as a party to this suit but was not. It would be unjust and [in]equitable to pierce the corporate veil where a judgment was entered against Superior by Default Order.

13. The Court finds there is no causal connection between the complained of actions and the actual harm suffered by Blackwell and, therefore, the Court declines to find as a matter of law that any Garnishee Defendant is an alter ego of Superior.

Id. at 3 (emphasis original).

[17] Blackwell now appeals.

Discussion and Decision

Standard of Review

[18] This matter was tried to the court, which issued findings and conclusions per Blackwell's request. When a party requests findings pursuant to Indiana Trial Rule 52, the trial court generally is "required by law to make findings on all the issues of the case." *Landmarks Motors, Inc. v. Chrysler Credit Corp.*, 662 N.E.2d 971, 976 (Ind. Ct. App. 1996); *see also Willet v. Clark*, 542 N.E.2d 1354, 1358 (Ind. Ct. App. 1989) (holding, when plaintiff requested findings on all, not just some, of the issues, "it was incumbent on the court to issue complete findings"). On appeal we neither reweigh the evidence nor assess witness credibility, and

we consider only the evidence most favorable to the judgment. *E.g.*, *In re Moeder*, 27 N.E.3d 1089, 1097 (Ind. Ct. App. 2015), *trans. denied*. In deference to the trial court's proximity to the issues, we will disturb the judgment only where there is no evidence supporting the findings or the findings fail to support the judgment. *Moriarty v. Moriarty*, 150 N.E.3d 616, 626 (Ind. Ct. App. 2020), *trans. denied*. The challenger on appeal has the burden of establishing that the trial court's findings and conclusions are clearly erroneous. *Blacklidge v. Blacklidge*, 96 N.E.3d 108, 113 (Ind. Ct. App. 2018). Findings and conclusions are clearly erroneous when a review of the record leaves the appellate court firmly convinced that a mistake has been made. *Id*. We evaluate questions of law de novo, and we owe no deference to the trial court's determination on such issues. *Id*. Moreover, "to the extent a ruling is based on an error of law or is not supported by the evidence, it is reversible." *MacLafferty v. MacLafferty*, 829 N.E.2d 938, 941 (Ind. 2005).

Waiver

[19] As an initial matter, we address Superior's contention that Blackwell waived his appeal of the order denying his motion to pierce the corporate veil by failing to raise the veil-piercing issue in the trial court. Superior provides no legal authority for that contention; therefore, Superior has waived its waiver argument. Ind. Appellate Rule 46(A)(8)(a) ("Each contention [in an appellate brief] must be supported by citations to authorities…").

[20] Superior's waiver notwithstanding, it is generally true that a party waives an issue on appeal if he or she failed to raise the argument in the trial court. *See, e.g.*, *Plank v. Cmty. Hosp. of Ind., Inc.*, 981 N.E.2d 49, 53 (Ind. 2013). However, Blackwell did raise the issue of piercing Superior's corporate veil in the trial court in the proceedings supplemental. *See* T.R. 69(E)(4) (permitting a motion in proceedings supplemental as to garnishee defendants who have or owe property to the judgment debtor that can be subject to execution); *see also Symons Intern. Group, Inc. v. Continental Cas. Co.*, 306 F.R.D. 612, 616-17 (S.D. Ind. 2014) (noting, where a motion in proceeding supplemental alleges garnishee defendants are alter egos of judgment debtors, that motion amounts to a claim that garnishee defendants have non-exempt property of, or an obligation owing to, the judgment debtor subject to execution per Indiana Trial Rule 69(E)(4)).

[21] Moreover, Superior and Garnishee Defendants chose to ignore Blackwell's pre-judgment discovery requests, the answers to which would have allowed Blackwell to discover that Superior was a mere instrumentality of Garnishee Defendants. Had Superior and Wharff Excavating answered Blackwell's discovery requests prior to the entry of default judgment, as ordered by the trial court, Blackwell at that point could have filed a motion to pierce Superior's corporate veil or join Wharff and/or Wharff Excavating as parties to the lawsuit. *See* T.R. 15 (regarding amended pleadings); T.R. 18-20 (regarding joinder of parties). Superior and Garnishee Defendants may not now benefit from their own discovery violations and defiance of a court order by claiming

waiver. *See, e.g.*, *Fifth Third Bank v. PNC Bank*, 885 N.E.2d 52, 55-56 (Ind. Ct. App. 2008) (noting one of the purposes of discovery sanctions authorized by Trial Rule 37 is to "ensure that a party will not profit from its failure to comply" with discovery requests). Blackwell has not waived his claims regarding piercing the corporate veil.

Piercing the Corporate Veil

[22] Blackwell asserts that the trial court clearly erred when it denied his motion to pierce Superior's corporate veil (i.e., disregard Superior's corporate form) and hold Garnishee Defendants liable for the default judgment against Superior. Our Supreme Court has summarized the law regarding piercing the corporate veil[7] as follows:

> As a general rule, shareholders are not personally liable for the acts of a corporation, *Aronson v. Price*, 644 N.E.2d 864, 867 (Ind. 1994) (citation omitted), and a corporation is not liable for the acts of related corporations[,] *Greater Hammond Cmty. Servs., Inc. v. Mutka*, 735 N.E.2d 780, 784 (Ind. 2000) (citing William Meade Fletcher, *Fletcher Cyclopedia of the Law of Private Corporations* §§ 41.10, 43, at 568, 711 (1999)). However, courts may invoke the equitable doctrine of piercing the corporate veil in order to "protect innocent third parties from fraud or injustice." *Aronson*, 644 N.E.2d at 867. When a corporation is functioning as an alter ego or a mere instrumentality of an individual or another

[7] Courts may also pierce the "corporate" veil of a limited liability company (LLC). *Longhi v. Mazzoni*, 914 N.E.2d 834, 838 n.3 (Ind. Ct. App. 2009), *trans. denied*; *see also Troutwine Est. Dev. Co., LLC v. Comsub Design and Eng'g, Inc.*, 854 N.E.2d 890, 899 (Ind Ct. App. 2006) (noting that, because state law provides protections to LLCs similar to those of corporations, similar analyses—such as piercing the corporate veil—apply when persons seek to circumvent those protections), *trans. denied*.

> corporation, it may be appropriate to disregard the corporate form and pierce the veil. *See Mutka*, 735 N.E.2d at 784; Fletcher, supra, § 41.10 at 124. "The propriety of piercing the corporate veil is highly dependent of the equities of the situation, and the inquiry tends to be highly fact-driven." Fletcher, supra, § 41.10 at 55 (2012 supp.) (footnote omitted). … "[T]he burden is on the party seeking to pierce the corporate veil to prove that the corporate form was so ignored, controlled or manipulated that it was merely the instrumentality of another and that the misuse of the corporate form would constitute a fraud or promote injustice." *Aronson*, 644 N.E.2d at 867.
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> "While no one talismanic fact will justify with impunity piercing the corporate veil, a careful review of the entire relationship between various corporate entities, their directors and officers may reveal that such an equitable action is warranted." *Stacey–Rand, Inc. v. J.J. Holman, Inc.*, 527 N.E.2d 726, 728 (Ind. Ct. App. 1988). When determining whether a shareholder is liable for corporate acts, our considerations may include: (1) undercapitalization of the corporation, (2) the absence of corporate records, (3) fraudulent representations 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, and (8) other shareholder acts or conduct ignoring, controlling, or manipulating the corporate form. *Aronson*, 644 N.E.2d at 867. In addition, when "a plaintiff seeks to pierce the corporate veil in order to hold one corporation liable for another closely related corporation's debt, the eight *Aronson* factors are not exclusive." *Oliver v. Pinnacle Homes, Inc.*, 769 N.E.2d 1188, 1192 (Ind. Ct. App. 2002), *trans. denied*.

Reed v. Reid, 980 N.E.2d 277, 301 (Ind. 2012); *see also, e.g.*, *CBR Event Decorators, Inc. v. Gates*, 962 N.E.2d 1276, 1282 (Ind. Ct. App. 2012) (noting the *Aronson*

factors are not exhaustive, nor must all factors be met in order to disregard the corporate form), *trans. denied*.

[23] A "subset" of piercing the corporate veil to hold one corporation liable for the actions of another is the "corporate alter ego doctrine." *Hipps v. Biglari Holdings, Inc.*, 136 N.E.3d 629, 638 (Ind. Ct. App. 2019), *trans. denied*. That doctrine

> is a device by which a plaintiff tries to show that two corporations are so closely connected that the plaintiff should be able to sue one for the actions of the other. *Greater Hammond Cmty. Servs., Inc., v. Mutka*, 735 N.E.2d 780, 785 (Ind. 2000). The purpose of the doctrine is to avoid the inequity that results when one corporation uses another corporation as a shield from liability. *Id*. When a plaintiff seeks to pierce the corporate veil using this doctrine, we consider additional factors, including whether: (1) similar corporate names were used; (2) the corporations shared common principal corporate officers, directors, and employees; (3) the business purposes of the corporations were similar; and (4) the corporations were located in the same offices and used the same telephone numbers and business cards. *Oliver* [*v. Pinnacle Homes, Inc.*], 769 N.E.2d [1188,] 1192 [(Ind. Ct. App. 2002), *trans. denied*.] Corporate identity may be disregarded under the alter ego doctrine where multiple corporations are operated as a single entity; where they are manipulated or controlled as a single enterprise through their interrelationship to cause illegality, fraud, or injustice or to enable one economic entity to escape liability arising out of an operation conducted by one corporation for the benefit of the whole enterprise. *Id*. Factors indicating that a corporation is the alter ego of another may include the intermingling of business transactions, functions, property, employees, funds, records, and corporate names in dealing with the public. *Id*.

Ziese & Sons Excavating, Inc. v. Boyer Constr. Corp., 965 N.E.2d 713, 720 (Ind. Ct. App. 2012) (quotations omitted).

[24] Where the record indicates that the businesses of the corporations at issue were conducted in such a manner that innocent third parties had no way of knowing with which corporation they were dealing, it may be appropriate to pierce the corporate veil. *Stacey-Rand, Inc.*, 527 N.E.2d at 729; *see also, Detrick v. Midwest Pipe & Steel, Inc.*, 598 N.E.2d 1074, 1080 (Ind. Ct. App. 1992) (same). Thus, Indiana courts have pierced the corporate veil where corporations "conducted their various business entities in such a way so as to cause confusion in the mind of any person attempting to deal with any one of th[o]se entities." *Stacey-Rand, Inc.*, 527 N.E.2d at 729.

[25] Blackwell challenges the trial court's finding that Blackwell issued a check to Wharff Excavating. Based on that finding and the finding that Blackwell was aware that Wharff Excavating did all of the work on the project, the trial court concluded that Blackwell could have sued Wharff and that Blackwell was not misled regarding Superior's, Wharff's, and Wharff Excavating's roles in the project. There is some evidence to support the findings that Blackwell issued a check to Wharff Excavating and was aware that Wharff Excavating did the work on the project. However, those findings do not support the conclusions that Blackwell could have sued Garnishee Defendants and that Blackwell was not misled. Rather, the trial court erred by failing to address at all the relevant issues; i.e., who the parties to the contract were and the factors relevant to the motion to pierce Superior's corporate veil. *See Landmarks Motors*, 662 N.E.2d

at 976. And a review of the record leaves us firmly convinced that a mistake has been made in that neither the findings nor the evidence support the trial court's ruling. *Blacklidge*, 96 N.E.3d at 113. (Ind. Ct. App. 2018); *MacLafferty*, 829 N.E.2d at 941.

Parties to the Contract

[26] Blackwell challenges the trial court's conclusion that Blackwell could have sued Wharff and, presumably, thereby avoided the need to seek to pierce Superior's corporate veil. However, a party to a contract generally only may sue another party to the contract for its breach. *E.g.*, *Care Grp. Heart Hosp., LLC v. Sawyer*, 93 N.E.3d 745, 753 (Ind. 2018) (noting it is well-established as a matter of contract law that a contract generally cannot bind a nonparty). The identity of the parties to a contract is ascertained from examining the written contract itself. *Sunman-Dearborn Cmty. Sch. Corp. v. Kral-Zepf-Freitag & Assoc.*, 167 Ind. App. 339, 338 N.E.2d 707, 709 (1976). That is, generally a party to a contact is one who is named as a party in the contract. *Id.*; *see also DSG Lake, LLC v. Petalas*, 156 N.E.3d 677, 687 (Ind. Ct. App. 2020) (holding auditor could not be sued for breach of contract as he was "not named as a party anywhere in the [contract] document"), *trans. denied*. Here, only Blackwell and Superior were

named as parties to the Contract; therefore, Blackwell understandably sued only Superior.[8]

[27] In addition, following the filing of the complaint, Superior made a binding judicial admission that the Contract was between it and Blackwell. A judicial admission is an admission made in a pleading or during the course of a trial. *Brazier v. Maple Lane Apts. I, LLC*, 45 N.E.3d 442, 452 (Ind. Ct. App. 2015), *trans. denied*. Such an admission is conclusive upon the party making it and relieves the opposing party of the duty to present evidence on that issue. *Id.*; *Stewart v. Alunday*, 53 N.E.3d 562, 568-69 (Ind. Ct. App. 2016) (quotations and citations omitted) ("In fact, it is universally conceded that the vital feature of a judicial admission is ... its conclusiveness upon the party making it, i.e., the prohibition of any further dispute of the fact by him and of any use of evidence to disprove or contradict it."). Furthermore, unlike evidentiary admissions which the trier of fact may accept or reject, judicial admissions are conclusive and binding on the trier of fact. *Stewart*, 53 N.E.3d at 568. Superior admitted in both its answer and its counter-claim that Blackwell and Superior "entered into a contract (the "Contract") whereby Superior would install a safe room in Blackwell's [residence] in return for the payment of $28,975.00 (the "Project")."

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[8] Moreover, as addressed in the following section of this decision, there was no way for Blackwell to know at the time he filed this lawsuit that Superior was a mere instrumentality of Wharff and/or Wharff Excavating and that the latter should be named as parties. And the facts that he wrote a check to Wharff Excavating and was aware that Wharff Excavating did the work on the project do not, alone, support the conclusion that he was aware that he was contracting with Wharff Excavating. Parties to a contract may subcontract work to nonparties and, further, may assign their rights under the contract—such as the right to payment—to nonparties. *See, e.g.*, *Kuntz v. EVI, LLC*, 999 N.E.2d 425, 429 n.5 (Ind. Ct. App. 2013).

Cause No. 32C01-1705-PL-60, Superior Safe Rooms, LLC's Answer, Affirmative Defenses, and Counterclaim. Both Superior and the trial court were bound by that admission.

[28] The trial court committed clear error when it failed to issue a finding that the Contract was between Blackwell and Superior. When a party requests findings per Indiana Trial Rule 52, the trial court is generally "required by law to make findings on all the issues of the case." *Landmarks Motors,* 662 N.E.2d at 976. Here, Blackwell requested findings on all issues raised in the Motion to Pierce the Corporate Veil, and that document alleged, among other things, that the agreement for the safe room project was between Blackwell and Superior. *See* Cause No. 32C01-1705-PL-60, Motion for Written Findings and Conclusions; Motion to Pierce Judgment Defendant's Corporate Veil and Hold Garnishee Defendants Liable for Plaintiff's Judgment. Therefore, given the clear language on the face of the Contract and Superior's binding judicial admission, the trial court erred when it failed to find as a fact that the contract for the safe room was between Blackwell and Superior. And that fact supports the opposite of the trial court's conclusion that Blackwell could have sued Wharff (or Wharff Excavating) and thereby avoided a motion to pierce Superior's corporate veil.[9] *See Sunman-Dearborn Cmty. Sch. Corp.*, 338 N.E.2d at 709.

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[9] The fact that the Contract was between Blackwell and Superior also fails to support the trial court's conclusion that it would be "unjust and [in]equitable" to hold Garnishee Defendants liable for the default judgment entered against Superior because "Wharff could have been named a party to this suit but was not."

Disregarding Superior's Corporate Form

Misuse of the Corporate Form

[29] Blackwell challenges the trial court's conclusions that he was not misled as to Superior's role in the project, that "[t]here was no indication that Garnishee Defendants used Superior to shield [themselves] from liability," and that Garnishee Defendants were not "alter ego[s]" of Superior "as a matter of law." Appealed Order at 3. Those conclusions are clearly erroneous as they are not supported by the trial court's findings or the record. As previously discussed, even if Blackwell wrote the check to Wharff Excavating and knew Wharff Excavating began the installation of the safe room, Blackwell still had no reason to believe his contract was with anyone other than Superior, i.e., the only other party named in the Contract. *See* footnote 8, above. In addition, the record discloses that Superior and Garnishee Defendants misused the corporate form—i.e., Superior's corporate form was so ignored, controlled, or manipulated that it was merely the instrumentality of Wharff and Wharff Excavating.

[30] Again, the trial court erred by failing to make necessary findings, as requested by Blackwell, about factors relevant to disregarding Superior's corporate form.

Appealed Order at 3. Rather, as previously noted, it would be inequitable to allow Garnishee Defendants to benefit from their refusal to give Blackwell discovery responses that could have led him to add Garnishee Defendants as parties or make an earlier motion to pierce Superior's corporate veil. It would also be inequitable to allow Superior to now dispute its judicial admission that it was the entity that contracted with Blackwell to "install a safe room in Blackwell's [residence]." Cause No. 32C01-1705-PL-60, Superior Safe Rooms, LLC's Answer, Affirmative Defenses, and Counterclaim.

Landmarks Motors, 662 N.E.2d at 976. Although the trial court mentioned the *Aronson* factors,[10] it failed to address the applicability of those factors, or factors relevant to the corporate alter ego doctrine, to this case.

[31] Considering the *Aronson* factors, the record discloses that Superior was "undercapitalized." Capitalization is inadequate, as would support piercing the corporate veil, when it is very small in relation to the nature of the entity's business and the risks attendant to such businesses. *Cmty. Care Ctrs., Inc. v. Hamilton*, 774 N.E.2d 559, 565 (Ind. Ct. App. 2002), *trans. denied*. Byers, the sole member of Superior, admitted that he never put any money into capitalization of it. Rather, Byers testified that Wharff opened Superior's bank account by depositing the minimum necessary to open an account. Superior's bank account records show the most money in the account since February of 2015 was approximately $300, which slowly dwindled over time.

[32] The record further discloses that Superior's only "corporate"—or, in the context of an LLC, "business"—records were its Articles of Organization and Business Entity Reports. Its only financial business records were the monthly statements of its minimally-funded bank account. Superior had no tax records, employee/payroll records, balance sheets, or other common business records. And, while there was no claim of fraudulent representations by Superior, the

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[10] Although the trial court listed the *Aronson* factors in its conclusions of law, the court did not address the existence of any of the *Aronson* factors in this case other than to conclude that Blackwell did not prove any such factors "CAUSED Blackwell's damages." *Id*. (emphasis original). As we note in more detail below, the required proof is not that the factors caused *damages* but that they caused an *injustice*.

record discloses that Wharff mistakenly believed—and conducted Superior's affairs as if—he was a member of Superior when he was not.

[33] Even more telling are the factors related to the "corporate alter ego doctrine," factors which the trial court erroneously failed to address at all.[11] *Hipps*, 136 N.E.3d at 638. Although Superior and Wharff Excavating did not use "similar corporate names," *id*., they did share employees and officers; Byers was the owner of Superior and an employee of Wharff Excavating, and Wharff owned Wharff Excavating and conducted Superior's business affairs as if he owned Superior. Superior, Wharff, and Wharff Excavating also had similar business purposes, i.e., to obtain safe room business for Wharff Excavating. *Id*. Moreover, they used the same business address and e-mail address; Superior's business address was listed at various times as either Wharff"'s home address or Wharff Excavating's business address, and the Contract lists Superior's e-mail address as Wharffexcavating@yahoo.com. Ex. v. 3 at 77.

[34] In addition, the record establishes that Superior was "so organized and controlled" by Garnishee Defendants and "its affairs were so conducted" by Wharff that Superior was "a mere instrumentality or adjunct" of Wharff Excavating. *Hipps*, 136b N.E.3d at 638. In addition to never having had its own address separate from Wharff's or Wharff Excavating's addresses, Superior had no physical place of business, it had no equipment other than possibly a

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[11] While the trial court mentions that such "additional factors" exist, it does not state what those factors are or apply them to this case. Appealed Order at 3.

pickup truck, it had no employees, it had no income, it filed no tax returns, and—most importantly—it did no business at all other than entering into the Contract with Blackwell. Moreover, its only member—Byers—did not conduct Superior's affairs; rather, it was Wharff who ran Superior "as if he owned it" because he actually believed that he did. Under similar circumstances this Court has had no difficulty in concluding that the corporate veil should be pierced. *See Fairfield Dev., Inc. v. Georgetown Woods Senior Apts., Ltd. P'ship.*, 768 N.E.2d 463, 468 (Ind. Ct. App. 2002) (affirming the decision to pierce the corporate veil where sued entity had "never been operated as an entity separate and apart from" the second entity), *trans. denied*; *Urbanational Dev., Inc. v. Shamrock Eng'g, Inc.*, 175 Ind. App. 416, 372 N.E.2d 742, 752 (1978) (affirming the decision to pierce the corporate veil where sued entity had "blank" corporate books, "no equipment, no payroll records, no tax withholding, no workmen's compensation, no insurance, no employees, and did not file any State or Federal tax returns").

[35] Thus, the findings and the record do not support the trial court's conclusions that Garnishee Defendants did not use Superior as a shield to liability and that they perpetrated no injustice. Wharff conducted the businesses of Superior and Wharff Excavating in such a manner that innocent third parties such as Blackwell had no way of knowing with which entity they were dealing. *See Detrick*, 598 N.E.2d at 1080; *Stacey-Rand, Inc.*, 527 N.E.2d at 729. Wharff himself did not even know that he was not a member of Superior. And, while

Blackwell does not claim that Garnishee Defendants *fraudulently* misled him,[12] the record discloses that they operated Superior in such a manner that they did, in fact, mislead Blackwell regarding with which company he was doing business. That is, regardless of Wharff's or Wharff Excavating's intentions, their misuse of Superior's corporate form led Blackwell to sue only Superior and resulted in the injustice that Garnishee Defendants escaped liability.[13] Blackwell established that Superior's corporate form was so ignored, controlled, or manipulated that it was merely the instrumentality of Garnishee Defendants.

Promotion of Injustice

[36] The trial court also clearly erred when it concluded that "Blackwell presented no evidence that any of the *Aronson* … factors CAUSED [his] damages," and that there was "no causal connection between the complained of actions and the actual harm suffered by Blackwell." Appealed Order at 3 (emphasis original). The first conclusion states an incorrect legal standard, and the second conclusion is not supported by the findings or the record.

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[12] Citing *Winkler v. V.G. Reed & Sons, Inc.*, 638 N.E.2d 1228, 1232 (Ind. 1994), the trial court concluded that one factor to consider regarding piercing the corporate veil is whether a corporation attempts to deceive third parties. However, that factor is not relevant here, where Blackwell seeks to pierce the corporate veil not based on alleged fraud—i.e., an attempt to deceive—but on alleged injustice resulting from misuse of the corporate form.

[13] Thus, the fact that "Superior, Wharff, Wharff Excavating, and Byers were [themselves] confused and disorganized when it came to who was listed as the owner of Superior" was not "harmless," as Superior contends. Appellee's Br. at 14.

[37] In order to disregard the corporate form of an entity, "the fraud or *injustice* alleged by a party seeking to pierce the corporate veil *must be caused by, or result from, misuse of the corporate form*." *Country Contractors, Inc. v. A Westside Storage of Indianapolis, Inc.*, 4 N.E.3d 677, 689 (Ind. Ct. App. 2014) (emphases added) (internal quotations and citation omitted). Thus, the trial court reached an erroneous legal conclusion to the extent it concluded that the misuse of the corporate form must be shown to cause damages, rather than injustice.[14]

[38] Moreover, neither the findings nor the record support the conclusion that there was no causal connection between the misuse of the corporate form and the harm/injustice to Blackwell. Wharff Excavating and Superior were manipulated and controlled by Wharff as a single enterprise through their interrelationship. That manipulation of Superior's corporate form misled Blackwell into believing that he was entering into a contract with, and engaging in business with, a legitimate LLC, i.e., Superior, when in fact, Superior was merely an instrumentality of Garnishee Defendants. Further, when the safe room project was not completed, the manipulation of Superior led Blackwell to sue Superior, rather than Garnishee Defendants. Following the filing of the lawsuit, Wharff and Wharff Excavating continued to hide behind Superior's corporate form and disobeyed a court order to provide discovery responses that would have allowed Blackwell to discover information relevant to their misuse

[14] The issue of damages was not before the trial court in the proceedings supplemental, nor is it before this Court. Blackwell obtained a default judgment for a specific amount in damages and that judgment was not appealed or set aside.

of Superior's corporate form. The resulting injustice to Blackwell was that he obtained a judgment against a company that did no business other than entering into a contract with him and had no capitalization and no income or assets—i.e., a company that was a mere instrumentality of Garnishee Defendants. In short, the injustice in this case is that Garnishee Defendants used Superior's corporate form to escape liability arising out of an operation conducted by Superior for the benefit of Garnishee Defendants. That is precisely the situation the corporate alter ego doctrine was designed to alleviate.

Conclusion

[39] Neither the evidence nor the trial court's findings that Blackwell wrote a check to Wharff Excavating and knew Wharff Excavating did the work on the project support its conclusion that Blackwell could have sued Wharff for breach of contract or that Superior's corporate veil should not be pierced. Rather, the evidence in the record supports only the opposite conclusions: Garnishee Defendants' misuse of Superior's corporate form resulted in the injustice that they escaped liability for their actions in relation to the project, and they should be held liable for the judgment against Superior. Therefore, we reverse.

[40] Reversed.

May, J., and Robb, J., concur.