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2012 IL App (3d) 100709-U

Order filed January 5, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

GERALD SCHMITT and KENDA SCHMITT,)	Appeal from the Circuit Court
)	of the 13th Judicial Circuit,
)	La Salle County, Illinois
Plaintiffs-Appellants,)	
)	Appeal No. 3-10-0709
v.)	Circuit No. 03-L-37
)	
STREATOR CONCRETE SERVICES, INC., and DEBRA MARTIN,)	
Administrator of the Estate of RICHARD J. MARTIN, Deceased,)	
)	Honorable Joseph P. Hettel,
Defendants-Appellees.)	Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices McDade and Wright concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in granting the motion for summary judgement of Debra Martin, administrator of the estate of Richard Martin.

¶ 2 Plaintiffs, Gerald and Kendra Schmitt, brought this breach of contract action against defendants, McCann Ready Mix Concrete, Streator Concrete Services, Inc. (Streator Concrete),

Richard Martin (Martin), and Debra Martin, administrator of the estate of Richard Martin (the estate). Only the allegations against Richard Martin and the estate are relevant to this appeal. Numerous complaints containing allegations against Martin were filed and disposed of by the circuit court of La Salle County, either by the granting of defendants' motion to dismiss or motion for summary judgment. Plaintiffs appeal from an order dismissing count III of its amended complaint against Martin, as well as an order granting the estate's motion for summary judgment as to count IV of the fourth amended complaint. Plaintiffs claim their complaints against Martin and the estate were "not substantially insufficient in law" and, as such, the trial court erred disposing of them via the granting of Martin's motion to dismiss and the estate's motion for summary judgment.

¶ 3

FACTS

¶ 4 The underlying dispute in this matter centers around concrete services performed at 2 Kiley Drive, Streator, Illinois. The procedural history of this case involved the filing of five complaints, eight motions to dismiss and two motions for summary judgment between numerous answers to the complaints, a bill of particulars, affirmative defenses and a counterclaim. To call the procedural history of this matter tortured would be kind.

¶ 5 Nevertheless, relevant to this appeal is count III from plaintiffs' amended complaint which reads:

"2. The defendant, Streator Concrete Services, Inc., is a corporation which does business in Streator, LaSalle County, Illinois.

3. The defendant, Richard Martin, is a shareholder, agent

or employee of Streator Concrete Services, Inc.

4. That Martin and Streator Concrete Services, perform, among other things, concrete finishing services.

5. That Schmitts are the owners of an apartment building located at 2 Kiley Drive, Streator, La Salle County, Illinois.

6. Between July 8, 1999, and July 13, 1999, Martin and Streator Concrete Services agreed to, and did perform, concrete finishing services for the driveway and parking area located at 2 Kiley Drive, Streator, Illinois.

7. That Martin and Streator Concrete Services Inc. had a duty to properly and in a workmanlike manner perform the aforesaid concrete finishing work.

8. In disregard of said duty, Martin and Streator Concrete Services Inc. improperly performed their duties, to wit:

- a. Prematurely finished the concrete surface;
- b. Used improper tools.

9. As a result of Martin and Streator Concrete Services, Inc., premature finishing and improper use of tools, the driveway and parking areas are now scaling, and will continue to scale in the future, all of which will cost approximately Thirty Eight Thousand One Hundred Fifty-Five (\$38,155.00) Dollars to replace. Schmitts damages are ongoing due to the continued scaling of the concrete.

10. That the Schmitts, or their designee, have paid Martin and Streator Concrete Services in full for their services."

¶ 6 On October 27, 2004, the trial court granted Richard Martin's motion to dismiss this count, without prejudice. The written order granting Martin's motion does not indicate the basis upon which the trial court granted it. In his motion to dismiss, Martin claimed that the count fails to adequately plead, with sufficient specificity, a cause of action for breach of contract. He further asserted that he simply cannot be held liable for debts of the corporate entity, Streator Concrete.

¶ 7 One month shy of four years after the trial court granted Martin's motion to dismiss, plaintiffs filed their fourth amended complaint. The fourth amended complaint substitutes Debra Martin, administrator of the estate of Richard Martin, as defendant for Richard Martin. Save increasing the amount of damages from \$38,155 to \$68,000 in paragraph nine and substituting the estate as a defendant, count I of the fourth amended complaint mirrors count III of the amended complaint.

¶ 8 The estate filed a motion for summary judgment, arguing that the trial court previously dismissed count III of the amended complaint on October 27, 2004, without prejudice, that the statute of limitations for that claim expired on July 13, 2004, and as such, plaintiffs were barred from refileing it. Further, the motion for summary judgment reasserted the original position taken by Richard Martin that, as a matter of law, he could not be held liable for the debts of the corporate entity Streator Concrete.

¶ 9 Ultimately, on April 15, 2010, the trial court ruled on the estate's motion for summary judgment and entered an order reading:

"1. Count I is dismissed as to the Estate. The motion as to the corporation is denied.

2. Count II is dismissed in its entirety.

3. Count III is dismissed in its entirety.

4. This is not a final and appealable order."

¶ 10 On August 26, 2010, the trial court entered a consent judgment for plaintiffs, and against Streator Concrete, in the amount of \$50,000. The consent judgment disposed of all claims against all parties to the litigation. Thereafter, on September 17, 2010, plaintiffs filed their notice of appeal asking for a reversal of the trial court's "orders on October 27, 2004, and April 15, 2010, which dismissed the claims against Richard J. Martin and Debra Martin, Administrator of the Estate of Richard J. Martin, deceased."

¶ 11 ANALYSIS

¶ 12 To be clear, we note that plaintiffs only appeal the dismissal of the contract count against Richard Martin, and his estate, relating to the work performed at Kiley Drive. Allegations were filed in this case relating to roofing jobs, garage doors and Bobcat rentals. Those are not at issue in this appeal.

¶ 13 We affirm the trial court's grant of summary judgment to Martin's estate. The order dismissing count III of the plaintiffs' amended complaint against Martin is moot. Richard Martin died and plaintiffs substituted his estate in the fourth amended complaint. Furthermore, the record on appeal contains an order dated February 17, 2009, which reads that plaintiffs dismissed the only remaining count against Richard Martin "by agreement." We discuss the dismissal of the amended complaint against Martin because the trial court discussed it when granting summary judgment to the estate.

¶ 14 Pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2002)), Martin filed a motion to dismiss the amended complaint, claiming he could not be held personally liable for the contractual debts of the corporation, Streator Concrete Services, Inc., and that the general allegation that a contract exists between plaintiffs and defendant, was an impermissible legal conclusion. As noted above, the written order dismissing count III does not identify the court's reasoning. However, a transcript of a hearing on the estate's motion for summary judgment indicates the trial court granted Martin's motion to dismiss the amended complaint on the basis that the complaint contains no allegations under which Martin could be held personally liable for the debts of the corporation.

¶ 15 In the summary judgment hearing, the trial court noted that it had already dismissed the count against Martin in the amended complaint, that the allegations against him had not changed, and, as such, granted the estate's motion for summary judgment. We review an order granting summary judgment *de novo*. *Clark Investments, Inc. v. Airstream, Inc.*, 399 Ill. App. 3d 209 (2010).

¶ 16 "A complaint for breach of contract must allege the existence of a contract between plaintiff and defendant, performance by plaintiff of the conditions imposed on him or her by the contract, breach of the contract by defendant, and the existence of damages as a result of the breach." *Quake Construction, Inc. v. American Airlines, Inc.*, 181 Ill. App. 3d 908, 912 (1989); *Wilkinson v. Yovetich*, 249 Ill. App. 3d 439, 449 (1993); *Payne v. Mill Race Inn*, 152 Ill. App. 3d 269, 273 (1987). "The law is clear in Illinois that it is essential in pleading the existence of a valid contract for the pleader to allege facts sufficient to indicate the terms of the contract." *Sherman v. Ryan*, 392 Ill. App. 3d 712, 732 (2009). A "general allegation that a contract exists

is, in the absence of a statement of supporting facts, a mere legal conclusion, which is not admitted by a motion to dismiss or a motion to strike.' " *Nuccio v. Chicago Commodities, Inc.*, 257 Ill. App. 3d 437, 444 (1994) (quoting *Pollack v. Marathon Oil Co.*, 34 Ill. App. 3d 861, 864 (1976)). "If the acceptance of an offer is oral, then the specific facts supporting this theory of acceptance must be alleged." *Nuccio*, 257 Ill. App. 3d at 444.

¶ 17 Plaintiffs' complaint alleges Martin and Streator Concrete "agreed" to perform finishing services. However, it fails to identify with whom they agreed. There is no allegation in plaintiffs' complaint that they were a party to the agreement. While we acknowledge that an individual who is not a party to a contract may enforce contractual rights and sue for breach of that contract if the original parties intentionally entered into the contract for the benefit of the individual, this is so only when the individual pleads, and eventually proves, facts sufficient to overcome the "strong presumption that the parties to a contract intend that the contract's provisions apply only to them, and not to third parties." *Martis, D.C., v. Grinnell Mutual Reinsurance Co.*, 388 Ill. App. 3d 1017, 1020 (2009).

¶ 18 The fact that plaintiffs failed to allege they were a party to Martin's agreement to perform the work in any of their five complaints, or that the parties to that agreement entered into it to intentionally benefit the plaintiffs, is a sufficient basis to grant the estate's motion for summary judgment.

¶ 19 Moreover, plaintiffs have failed to allege any facts upon which Martin can be held liable for the corporate debts of Streator Concrete. Plaintiffs specifically alleged that Martin is a "shareholder, agent or employee" of Streator Concrete. The trial court was required to take that well pled fact as true. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564 (2011).

¶ 20 A corporation is a legal entity which exists separate and distinct from its shareholders, directors and officers. *Dismuke v. Rand Cook Auto Sales, Inc.*, 378 Ill. App. 3d 214 (2007). "Generally, corporate officers and directors are not individually liable for the debts and obligations of the company." *Id* at 218. A court may disregard the corporate structure and find corporate officers or directors personally liable "through a remedy known as piercing the corporate veil." *Falcon Associates, Inc., v. Cox*, 298 Ill. App. 3d 652, 663 (1998). To pierce the corporate veil, there must be: (1) such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist; and (2) such circumstances that adherence to the fiction of a separate corporate existence would sanction a fraud, promote injustice, or promote inequitable consequences. *Id.*

¶ 21 None of the plaintiffs' five complaints contain even a suggestion that piercing the corporate veil is appropriate in this matter. In fact, plaintiffs do not even allege that Martin is an officer or director of Streator Concrete, only that he is a "shareholder, agent or employee." We find plaintiffs failed to allege facts sufficient to hold Martin personally liable for the debt of Streator Concrete Services, Inc. Likewise, there are no allegations to even suggest that Martin was acting in any capacity other than as an agent of the corporation. As such, we hold the trial court did not err in granting the estate's motion for summary judgment.

¶ 22 Finally, plaintiffs claim on appeal that the trial court also made erroneous rulings concerning the effect that the statute of limitations for oral contracts (735 ILCS 5/13-205 (West 1998)) and the Dead Man's Act (735 ILCS 5/8-201 (West 2006)) when ruling on the estate's motion for summary judgment. As noted above, the trial court's written order granting the estate's motion for summary judgment contains no specific basis as to how the court arrived at its

decision to grant the order. Moreover, our review of the transcript indicates that the basis for the ruling stemmed from the fact that it had previously dismissed count III of the amended complaint as "Richard Martin is a separate entity from the corporate entity" and as such "cannot be held personally liable for the debt of Streator Concrete Services, Inc." The trial judge specifically stated during the hearing on the estate's motion for summary judgment, "It was the law of this case so to speak."

¶ 23 Regardless of the trial court's reasoning for granting the estate's motion for summary judgment, we may affirm on any basis appearing in the record. *Prignano v. Prignano*, 405 Ill. App. 3d 801, 814 (2010). Having found sufficient reasons in the record to affirm the trial court, we need not address plaintiffs' contentions of error pertaining to the statute of limitations and Dead Man's Act. In over seven years and in five attempts to state a cause of action against Martin personally, plaintiffs failed to do so. Enough is enough.

¶ 24 **CONCLUSION**

¶ 25 For the foregoing reasons, the judgment of the circuit court of La Salle County is affirmed.

¶ 26 Affirmed.