IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MIDLAND INTERIORS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 18544
	)	
DAVID BURLEIGH and WINDOW TREATMENT & CARPET, INC.,	)	
	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

Submitted: September 14, 2006
Decided: December 19, 2006

Frederick S. Freibott, Esquire, THE FREIBOTT LAW FIRM, P.A., Wilmington, Delaware, *Attorneys for Plaintiff*

David Burleigh, Wilmington, Delaware, *Pro Se Defendant*

PARSONS, Vice Chancellor.

At issue in this case is whether a judgment creditor can "pierce the corporate veil" of the judgment debtor corporation to reach the assets of the sole stockholder-employee of the debtor. Plaintiff, Midland Interiors, Inc. ("Midland"), contracted with Defendant Window Treatment & Carpet, Inc. ("Window Treatment") to install carpet for Window Treatment's clients. Window Treatment failed to pay Midland for many of the carpet installations. On December 9, 1997, Midland obtained a stipulated judgment against Window Treatment in the amount of $7,180.37 (the "December 9 Judgment"). Midland has not collected on this judgment, in part because Window Treatment has no assets. Therefore, Midland seeks equitable relief in the form of piercing the corporate veil of Window Treatment so as to enforce the December 9 Judgment against its owner and sole stockholder, David Burleigh, personally. For the reasons set forth below, the Court will disregard the corporate status of Window Treatment and enter judgment against Burleigh and in favor of Midland.

I. FACTS AND PROCEDURAL HISTORY

A. The "Corporate Form" and History of Window Treatment

On February 25, 1994, Burleigh formed Window Treatment as a corporation under Delaware law to engage in the sale and installation of carpet and window treatments. To assist him in incorporating the company, Burleigh hired McBride, Shopa & Company ("Shopa"), an accounting firm.[1] Throughout Window Treatment's existence, Burleigh

[1] Trial Transcript ("Tr.") at 26. Unless otherwise indicated, citations to the trial transcript are to Burleigh's testimony. The Shopa firm also processed any corporate-related notices. Tr. at 26.

was the sole stockholder, director, president and employee.[2] Burleigh never held any corporate meetings of Window Treatment or kept corporate minutes.[3]

Financially, Window Treatment never owned any assets, although it did maintain a corporate checking account.[4] Burleigh wrote all checks drawn on Window Treatment's account.[5] Window Treatment did not carry workers' compensation for its subcontractors or maintain a general liability insurance policy.[6] It never paid Burleigh a salary, in part because the company was losing money and unable to generate new business.[7] In 1996, Window Treatment remained undercapitalized and its expenses exceeded its revenue to the point that it ceased to be a viable business.

On March 1, 1996, the Secretary of State proclaimed Window Treatment inoperative and void effective May 30, 1996 for failure to pay its annual franchise taxes.[8] When Burleigh received actual or constructive notice of this voidance constituted the primary factual dispute at trial. In an August 2001 interrogatory response, prepared with assistance from his attorney, Burleigh answered that Window Treatment ceased doing

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2 Tr. at 11-12.

3 Tr. at 13-15.

4 Tr. at 13. Burleigh used his personal vehicle when engaged in business activities. *Id.* at 15.

5 Tr. at 18.

6 Tr. at 14.

7 Tr. at 20.

8 Pl.'s Ex. 3-C. References in this form are to the Plaintiff's listed exhibits in the Pretrial Stipulation filed May 5, 2006.

business in or around June 1996.[9] At trial, however, Burleigh testified that he continued to operate Window Treatment until he closed the corporate bank account in September 1996, and he could not remember why he would have told his attorney June.[10] Burleigh therefore disavowed his interrogatory response as mistaken.[11] He also testified that the Shopa firm would have processed any notices sent to the corporation.[12]

Notwithstanding the failure of Window Treatment to generate any net income, Burleigh started a new company, Window Treatments Unlimited, Inc. ("Window Unlimited") in March 1997.[13] Window Unlimited purportedly engaged in the same general business as Window Treatment, except that it also tinted windows.[14] Burleigh served as its sole stockholder, director, president and employee.[15] Like Window Treatment, Window Unlimited did not maintain an insurance policy or have any assets other than a corporate bank account.[16] Ultimately, Window Unlimited proved no more successful than Window Treatment, and it, too, went out of business.

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9 Tr. at 17, 25-26.

10 Tr. at 16-17, 25-26.

11 Tr. at 26.

12 *Id.*

13 Tr. at 20, 42. Burleigh testified that the money he used to start up Window Unlimited came from an inheritance. *Id.* at 42.

14 Tr. at 39.

15 Tr. at 39-40.

16 Tr. at 40. Nor did Window Unlimited hold any corporate meetings. *Id.*

B. The Midland Contracts

During its existence, Window Treatment used subcontractors to fulfill its carpet installation orders.[17] One of these subcontractors was Midland. Upon receiving a carpet order, Burleigh would contact Vito Delloso, Midland's president. Midland would then order the carpeting and perform the installation.[18] After completing the work, Midland would bill Window Treatment, and Window Treatment would pay Midland with a company check.[19] Window Treatment initially paid Midland without incident for the jobs Midland performed.[20]

Shortly after the relationship began, however, Window Treatment became delinquent in its payments to Midland. In total, Midland presented uncontested evidence that Midland performed nine contracts in 1996 for which Window Treatment either did not pay or only partially paid (collectively, the "1996 Contracts").[21] Six of the nine contracts began on or after June 1, 1996, and the final contract between the two

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17 Tr. at 22-23.

18 Tr. at 23; *id.* at 54 (Delloso). Delloso testified that it would take approximately two to five weeks to complete the job once Burleigh placed the order. Tr. at 55-56.

19 Tr. at 54 (Delloso).

20 *Id.*

21 Tr. at 57 (Delloso); Pl.'s Ex. 3-B.

companies began on August 12, 1996.[22] As of December 4, 1996, Midland calculated that Window Treatment owed $9,680.37 on the 1996 Contracts.[23]

C. Midland Sues in Justice of the Peace Court

In May 1997, Midland filed suit against Window Treatment in Justice of the Peace Court 12 to recover the $9,680.37 Window Treatment owed on the 1996 Contracts. On June 9, 1997, Burleigh handwrote a letter to the court asking for a bill of particulars because he disputed the total amount of the debt. He signed this letter "Window Treatment & Carpet Inc."[24]

On December 9, 1997, Burleigh appeared in court for a hearing on Midland's claim. Before the hearing began, Burleigh asked Delloso and his attorney to speak with him. Delloso recounted this conversation as follows:

> Mr. Burleigh approached Mr. Freibott and I and asked us to please step outside, he wanted to talk to us, and I had no problem with that. When we stepped outside, Mr. Burleigh said, "Listen, this is going to be very short because I'm going to tell the judge that *the company owes the money and we fully intend to pay for it*, and when we go in, I'm going to tell the judge that." I said, "I have no problem with that." We said okay. We went back inside, the judge came out, and … he called the hearing to order, and Mr. Burleigh stood up, and he said, "Your Honor, I'd like to make a comment," and he said, "Go right ahead," and he stated the same thing that he told Mr. Freibott and I outside. At that point, I'm not sure how the terminology was, but the judge had said, "Okay, fine, if you understand what you're saying and you want to say

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22 Pl.'s Ex. 3-B.

23 *Id.*

24 Tr. at 28-29; Pl.'s Ex. 3-A.

> this, then I'll enter judgment for Midland Interiors," as I understood it, and that was the gist of the conversation.[25]

Although Burleigh did not recall the specifics of this discussion during his trial testimony,[26] he did state that he questioned the amount claimed and whether Delloso was mistaken in his figures.[27] Before returning to the courtroom, the parties negotiated the amount Window Treatment owed to $7,180.37, which Delloso felt would satisfy the 1996 Contracts in full.[28] During the hearing, Burleigh stated that he represented the corporation and recognized that the judgment was going to be entered against Window Treatment, but he did not advise the court or Midland that Window Treatment was void and no longer in operation or that it had no assets or income from which to pay the judgment.[29] As a result of the proceeding, Midland obtained a stipulated judgment against Window Treatment for $7,180.37.[30]

D. Midland Files This Action in the Court of Chancery

Midland transferred the December 9 Judgment to the Superior Court on October 26, 1999. On July 17, 2000, Midland deposed Burleigh to determine what assets, if any, were available to satisfy the judgment. Finding Window Treatment to be

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25 Tr. at 58-59 (emphasis added).

26 Tr. at 32-33.

27 Tr. at 64-65.

28 Tr. at 59-60 (Delloso).

29 Tr. at 33.

30 Pl.'s Ex. 3-A. Midland also was awarded $30.00 in court costs, which it is not seeking.

insolvent, Midland sued Window Treatment and Burleigh in this Court on December 12, 2000, seeking to pierce the corporate veil. Midland seeks to hold Burleigh personally liable for the December 9 Judgment and also requests a determination as to whether a fraudulent conveyance occurred when Burleigh formed Window Unlimited.[31]

This Court held a trial on the merits of those claims on May 10, 2006. This is the Court's post-trial opinion.

II. ANALYSIS

Having considered the parties' positions, the Court is satisfied that Midland has established, both factually and legally, adequate grounds to disregard Window Treatment's separate corporate existence and hold Burleigh personally liable on the December 9 Judgment.

A. Legal Standard

At the outset, this Court realizes that persuading a Delaware court to pierce the corporate veil is a difficult task.[32] Absent compelling cause, a court will not disregard the corporate form or otherwise disturb the legal attributes, such as limited liability, of a

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[31] Pretrial Stip. at 4. In 2003, Burleigh filed Chapter 7 bankruptcy and this case was stayed pending resolution of the bankruptcy. *Midland Interiors, Inc. v. Burleigh*, 2006 WL 279137, at *2 (Del. Ch. Jan. 27, 2006); Pretrial Stip. at 2. The bankruptcy plan required Burleigh to repay certain creditors and to place funds related to disputed claims, including the entire December 9 Judgment, into an escrow account with the Bayard Law Firm. On March 1, 2005, Burleigh was granted discharge from these bankruptcy proceedings; the funds related to Midland's claim remain in escrow. *Midland*, 2006 WL 279137, at *2; Pretrial Stip. at 2; Tr. at 49.

[32] *Harco Nat'l Ins. Co. v. Green Farms, Inc.*, 1989 WL 110537, at *4 (Del. Ch. Sept. 19, 1989).

corporation.[33] Although the legal test for doing so "cannot be reduced to a single formula that is neither over- nor under-inclusive,"[34] our courts have only been persuaded to "pierce the corporate veil" after substantial consideration of the shareholder-owner's disregard of the separate corporate fiction and the degree of injustice impressed on the litigants by recognition of the corporate entity.[35]

"Beyond according respect for the formalities some weight, however, the cases inevitably tend to evaluate the specific facts with a standard of 'fraud' or 'misuse' or some other general term of reproach in mind."[36] As the Supreme Court stated in *Pauley Petroleum Inc. v. Continental Oil Co.*,[37] "[Disregarding the corporate entity] may be done only in the interest of justice, when such matters as fraud, contravention of law or contract, [or] public wrong . . . are involved."[38] Thus, the evaluation of corporate

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33 *Gadsden v. Home Pres. Co.*, 2004 WL 485468, at *4 (Del. Ch. Mar. 12, 2004); *Harco*, 1989 WL 110537, at *4; *Irwin & Leighton, Inc. v. W.M. Anderson Co.*, 532 A.2d 983, 989 (Del. Ch. 1987).

34 *Irwin & Leighton*, 532 A.2d at 989.

35 *See id.; see also David v. Mast*, 1999 WL 135244, at *3 (Del. Ch. Mar. 2, 1999) ("[T]he equitable right to sue to enforce these [public] policies against the real wrongdoer hiding behind a corporate shell rests with the person identified by statute to have an entitlement to protection….").

36 *Irwin & Leighton*, 532 A.2d at 989. *See also Morris v. Mergenthaler*, 1980 WL 268072, at *2 (Del. Ch. Oct. 14, 1980) ("It has long been settled that courts may ignore the corporate fiction where it is void as a cover for fraud or illegality."); *Buechner v. Farbenfabriken Bayer Aktiengesellschaft*, 154 A.2d 684, 687 (Del. 1959) ("[T]he corporate fiction may be disregarded to prevent fraud.").

37 239 A.2d 629 (Del. 1968).

38 *Id.* at 633. *See also Cross v. BCBSD, Inc.*, 836 A.2d 492, 497 (Del. 2003) (reiterating the plaintiff's burden for a "veil piercing claim").

formalities must be performed in conjunction with consideration of any fraudulent action committed under the guise of the corporate form.[39]

Implicitly, the legal status of the corporation also factors into the analysis. "[A] Delaware corporation is not dead for all purposes following forfeiture of its charter."[40] Further, 8 *Del. C.* § 278 continues the existence of a voided corporation for three years for purposes of lawsuits.[41] These provisions operate to provide a corporate creditor a remedy against the corporation and to protect individual corporate officers against personal liability if they contract on behalf of a voided corporation.[42] Because Burleigh never reinstated Window Treatment's corporate status, these provisions have limited relevance to this case.

B. Factors Relevant to Whether Burleigh Used the Corporate Status of Window Treatment to Perpetrate a Fraud

The issue here is whether Burleigh's negotiation of the 1996 Contracts and his subsequent representations to Delloso and the Justice of the Peace Court amount to a

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39 *See generally Gadsden*, 2004 WL 485468, at *4 ("A court of equity will disregard the separate legal existence of a corporation where it is shown that the corporate form has been used to perpetrate a fraud or similar injustice.").

40 *Frederic G. Krapf & Son, Inc. v. Gorson*, 243 A.2d 713, 715 (Del. 1968). While 8 *Del. C.* § 510 does void all of the corporation's powers in the case of nonpayment of taxes, it must be read in light of 8 *Del. C.* § 312(e), which provides for retroactive validation of contracts made during this voided period and exclusive corporate liability under such contracts if the certificate is reinstated. *Id.*; DEL. CODE ANN. tit. 8, §312(e) (2001). Section 312(e) does not apply here because Burleigh never sought to reinstate Window Treatment's corporate charter; rather, he simply incorporated an entirely new company.

41 DEL. CODE ANN. tit. 8, §278 (2001).

42 *Krapf & Son*, 243 A.2d at 715.

fraud, contravention of contract, or public wrong sufficient to justify this Court setting aside the protections of incorporation and holding Burleigh personally liable. This Court concludes that the question must be answered in the affirmative due to the frauds committed by Burleigh in the name of the defunct Window Treatment.

1. Lack of corporate formalities

Corporations such as Window Treatment, like any other business incorporated in this State, are required to conform to the requirements of the law in order to invoke fully its protections. Although the failure to observe corporate formalities does not, by itself, warrant piercing the corporate veil, this Court notes Window Treatment's disregard of those formalities. On one hand, Burleigh maintained a separate corporate bank account and hired an accountant to assist him with the incorporation. On the other, Burleigh failed to adhere to other formalities traditionally associated with the corporate fiction, such as holding corporate meetings and keeping minutes of them. Further, Burleigh's operation of Window Treatment ensured that it never had any economic worth, insurance policy, or assets that could be attached by a judgment creditor.

Insolvency is another factor that may be relevant in veil piercing cases. In *Mason v. Network of Wilmington, Inc.*,[43] this Court determined that insolvency, like respect for corporate formalities, is just part of the entire determination:

> Clearly, mere insolvency is not enough to allow piercing of the corporate veil. If creditors could enter judgments against shareholders every time that a corporation becomes unable to pay its debts as they become due, the limited liability

[43] 2005 WL 1653954 (Del. Ch. July 1, 2005).

> characteristic of the corporate form would be meaningless…. [I]nsolvency is one factor to be considered in assessing whether the corporation engaged in conduct that unjustly shields its assets from its creditors. If so, and especially if particular shareholders benefited from and controlled that conduct, then justice would require the piercing of the corporate veil in order to hold the benefiting shareholders responsible.[44]

While Window Treatment's disregard of many of the corporate formalities and its insolvency support Midland's position, Burleigh should not be deprived of the protections of incorporation merely by a balancing of what he did right and what he did wrong in these respects. Instead, the Court must consider Burleigh's substantial lack of adherence to corporate attributes in conjunction with the actions he took under the guise of his corporation in connection with the 1996 Contracts and the proceeding before the Justice of the Peace in December 1997.

2. Business practices after Window Treatment became legally void

On March 1, 1996, Window Treatment was proclaimed inoperative and void effective May 30, 1996, pursuant to 8 *Del. C.* § 510,[45] for failing to pay its annual taxes as a Delaware corporation. Window Treatment, through Burleigh, however, continued to order carpet from Midland after this date. Specifically, from June 1, 1996 until August 12, 1996, Burleigh, on behalf of Window Treatment, negotiated six of the nine contracts comprising the 1996 Contracts. Midland argues that it entered into these

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44 *Id.* at *3.

45 DEL. CODE ANN. tit. 8, §510 (2001) ("If any corporation … neglects or refuses for 1 year to pay the State any franchise tax or taxes, which has or have been, or shall be assessed against it, … the charter of the corporation shall be void, and all powers conferred by law upon the corporation are declared inoperative ….").

contracts because Burleigh gave Midland the false and mistaken impression that Window Treatment could fulfill its end of the contracts without incident.[46]

Having considered Burleigh's explanation of the circumstances regarding the 1996 Contracts, I find that Burleigh knew Window Treatment had become inoperable for failing to pay its taxes by the end of June 1996. In reaching this conclusion, I credit Burleigh's August 2001 interrogatory response on this very issue, which was prepared with help from his attorney five years after the fact. I do not believe his contrary trial testimony in 2006 that he was mistaken in 2001 and give that testimony no weight, particularly considering that he gave it ten years after the formation of the 1996 Contracts and presented no evidence that he ever previously controverted or corrected his earlier interrogatory response as mistaken. Because I find that Burleigh knew about the voided status of Window Treatment when he secured the last of the 1996 Contracts, I conclude that at least some of those contracts were fraudulently negotiated.

Burleigh's actions in the year immediately following the March 1996 declaration that Window Treatment would become void effective May 30, 1996 further corroborates the conclusion that it is more likely than not that Burleigh knew the corporation was void by the end of June 1996. For example, the closing of Window Treatment's bank account in September 1996 evidenced Burleigh's intent to accept the voiding of the company without trying to cure its tax delinquencies. Similarly, his formation of a new and different corporation in March 1997 to carry on essentially the same business as the

[46] Midland Post-Trial Br. at 7.

voided corporation reflects little or no concern for his previous suppliers or the obligations he undertook to them in his capacity as the sole person behind Window Treatment.

3. The misrepresentations made in the Justice of the Peace Court

Burleigh's conduct in connection with the December 1997 hearing in the Justice of the Peace Court also favors piercing the corporate veil. Burleigh admitted having a conversation with Midland's president, Delloso, before the hearing. Burleigh testified that he did not recall the details of that conversation, but he did remember negotiating a reduction of the amount Midland claimed. Delloso had a more detailed recollection of the conversation, and I accept his description of what transpired. In particular, I find that Burleigh said to Delloso and his attorney, "I'm going to tell the judge that the company owes the money and we fully intend to pay for it."

Burleigh's statement cannot be reconciled with the fact that he knew the company had ceased to exist in June 1996, more than a year earlier, and that it had no assets. In making such a statement in the course of discussions with Midland, Burleigh intentionally misled Midland into believing Window Treatment would be able to satisfy the stipulated December 9 Judgment. There is no dispute that Window Treatment was legally void when Burleigh acquiesced to the entry of judgment against it, and Burleigh understood as much. Burleigh also failed to present any evidence to suggest that he had any reason to believe in December 1997 that Window Treatment could pay the judgment. Under these circumstances, permitting Burleigh to invoke the corporate form of Window Treatment to avoid any personal liability would compound the fraud.

4. The degree of injustice to Midland if the corporate status is upheld

The facts that Window Treatment ceased to be legally operative on May 30, 1996, that Burleigh knew this fact in June 1996, that he closed the corporate bank account in September 1996, and that Burleigh failed to disclose these facts in 1997 when he stipulated to the December 9 Judgment show that Burleigh intended to use Window Treatment's flawed corporate form to shield himself from personal liability to Midland in 1997 and, by inference, during the negotiation and performance of the 1996 Contracts as well. To uphold Burleigh's attempt to hide behind Window Treatment's corporate status in the face of his false representation to a judge and Midland in 1997 that Window Treatment fully intended to pay the amount due would encourage similar fraudulent behavior. The interests of justice, together with Burleigh's failure to adhere substantially to the corporate formalities, mandate piercing Window Treatment's corporate veil and imposing the December 9 Judgment against Burleigh personally.[47]

[47] Because the fraud here justifies piercing the corporate veil and permitting recovery, Midland's claim for a determination that Window Treatment's assets were fraudulently transferred to Window Unlimited may be moot. In any event, despite having had adequate time to secure counsel, Window Treatment did not appear by counsel during the trial, post-trial briefing or argument. To the extent Midland still seeks relief on this claim, it shall file a motion for default judgment or other appropriate pleading within twenty days of the date of this memorandum opinion and order.

III. CONCLUSION

For the foregoing reasons, the Court grants Midland's claim to pierce the corporate veil of Window Treatment. Judgment shall be entered for Midland and against defendant Burleigh, individually, in the amount of $7,180.37.[48]

The Court is entering a separate Order to implement this Memorandum Opinion.

[48] At trial, Midland's attorney stated: "I am not looking for interest, I am not looking for costs, and I am not looking for attorneys fees because I don't think he can pay it, but I know there is money over at the Bayard firm in this amount [of $7,180.37] to pay off this debt." Tr. at 50. Thus, the Court will not award any interest, attorneys' fees or costs in this action.