

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 2nd day of June, 2016.

A.G. Dillard, Inc., Appellant,

against Record No. 151182
Circuit Court Case No. CL14-834

Stonehaus Construction, LLC, et al., Appellees.

Upon an appeal from a judgment rendered by the Circuit Court of Albemarle County.

Upon consideration of the record, briefs, and argument by counsel for the appellant, the Court is of opinion that there is error in the judgment of the Circuit Court of Albemarle County.

On October 31, 2014, A.G. Dillard, Inc. (A.G. Dillard) filed suit against Stonehaus Construction, LLC (Stonehaus), Stonehaus, LLC, Bondstone Ventures, LLC, Stonehaus Realty, LLC, Bondstone Operations Group, LLC (preceding parties, except Stonehaus, collectively referred to as Related Entity Defendants), Robert Hauser and Kedra Hauser¹ (collectively, Hausers) (the Hausers, Stonehaus and the Related Entity Defendants are collectively referred to as Defendants). A.G. Dillard sought to collect a judgment that had been levied against Stonehaus in December 2013 (the underlying suit) by piercing Stonehaus's corporate veil to reach the assets of the Related Entity Defendants and the Hausers. Further, A.G. Dillard sought to unwind each conveyance from Stonehaus to the Related Entity Defendants "since at least February 2013" such that these funds would be returned to Stonehaus, because they were fraudulent conveyances pursuant to Code § 55-80.

Regarding its piercing the corporate veil claim, A.G. Dillard alleged, "Robert Hauser (or an entity controlled by him, such as Darby Holdings LLC) is a Member and/or Manager of each

¹ A.G. Dillard's complaint refers to this individual as "Kedra Hauser." However, the demurrer filed by this individual and others refer to her as "Kendra Hauser." A.G. Dillard's memorandum in opposition to the demurrer refers to this individual by both names. A.G. Dillard's brief to this Court refers to her as "Kendra Hauser." As this appeal involves the granting of a demurrer, we refer to this individual as she is identified in the complaint, "Kedra Hauser."

of Stonehaus and each of the Related Entity Defendants.” A.G. Dillard claimed that Stonehaus and the Related Entity Defendants created a scheme to enable Stonehaus to avoid liability for breaches of contract or failure to pay. It stated that Stonehaus has been legally insolvent, has had no bank account since at least February 2013, has had its funds siphoned by Robert Hauser and the Related Entity Defendants, “and is effectively a façade for the operations” of the Related Entity Defendants. It also explained that Stonehaus and the Related Entity Defendants “do not operate as separate personalities” as shown by the fact that they present themselves to the public as a single entity named “Stonehaus” and each entity’s assets and employees are used by the other entities as if the other entities also own them. It asserted that to treat Stonehaus and the Related Entity Defendants as separate would cause an injustice to A.G. Dillard. A.G. Dillard asked the court to “[p]ierc[e] the corporate veil of the Related Entity Defendants and the Hausers so that A.G. Dillard may enforce its judgment against each of them, jointly and severally.”

Regarding its fraudulent conveyance claim, A.G. Dillard alleged that Robert Hauser owes Stonehaus more than \$160,000, but that Stonehaus has made no effort to collect this debt. Further, A.G. Dillard alleged that Stonehaus has not held its own funds or had a bank account since February 2013, the date on which the underlying litigation recommenced after a stoppage in the case to allow for “negotiation.” It asserted that when Stonehaus receives money, it transfers the funds to a Related Entity Defendant for no valuable consideration. It alleged that “[t]he primary purpose of this arrangement, and indeed the only conceivable reason for an operating entity not to have an operating account, is to delay, hinder and defraud Stonehaus’ creditors.”

Defendants demurred, arguing that A.G. Dillard failed to state a claim for piercing the corporate veil and for fraudulent conveyance. The circuit court sustained the demurrer. It ruled that A.G. Dillard failed to identify targets of the veil piercing action with the requisite specificity to allege a cause of action. Further, it held that A.G. Dillard’s fraudulent conveyance claim was insufficient because a claim for fraudulent conveyance pursuant to Code § 55-80 must be pled with the same level of specificity as common law fraud, and A.G. Dillard only alleged a general fraudulent scheme without reference to any specific transaction. A.G. Dillard appeals.

We review a circuit court’s decision on a demurrer de novo. Collett v. Cordovana, 290 Va. 139, 144, 772 S.E.2d 584, 587 (2015).

A demurrer challenges whether a complaint alleges a cause of action upon which the relief requested may be granted. *Id.* Thus, for purposes of ruling upon a demurrer, a court accepts all facts properly pled in a complaint and any inferences fairly drawn from those facts as true and views such facts and inferences “in the light most favorable to the nonmoving party.” Murayama 1997 Trust v. NISC Holdings, LLC, 284 Va. 234, 238, 245, 727 S.E.2d 80, 82, 86 (2012) (citation, alteration and internal quotation marks omitted). A complaint need only inform a defendant of the true nature of a claim in order to survive a demurrer. Squire v. Virginia Hous. Dev. Auth., 287 Va. 507, 517, 758 S.E.2d 55, 60 (2014); see also Rule 1:4(d) (“Every pleading shall state the facts on which the party relies in numbered paragraphs, and it shall be sufficient if it clearly informs the opposite party of the true nature of the claim or defense.”).

First, A.G. Dillard argues that the circuit court erred by sustaining the demurrer concerning the piercing the corporate veil claim because its complaint “clearly informs the opposite parties of the true nature of the claim and alleges facts that demonstrate improper capitalization, alter ego, and evasion of personal and corporate obligations.” It claims that it alleged sufficient facts to pierce the corporate veil of Stonehaus to reach its member, Robert Hauser, and then reverse pierce the Related Entity Defendants’ corporate veils to reach their assets through Robert Hauser, who controls them as well. Generally, when a plaintiff has a claim against a limited liability company, the plaintiff may only pursue that claim against the limited liability company itself and not its members. Code § 13.1-1019 (providing that a member is not personally liable to third parties for the liabilities of a limited liability company “solely by reason of being a member, manager, organizer or agent of a limited liability company”); Gowin v. Granite Depot, LLC, 272 Va. 246, 255, 634 S.E.2d 714, 719 (2006) (“A limited liability company is an entity that, like a corporation, shields its members from personal liability based on actions of the entity.”); In re White, 412 B.R. 860, 864-65 (Bankr. W.D. Va. 2009) (“In Virginia, a limited liability company is a legal entity separate and distinct from its members.”).

However, in rare instances, a limited liability company’s corporate veil may be pierced to hold a member personally liable. We have held that while there is no single rule or standard and the determination is fact-specific, “when the unity of interest and ownership is such that the separate personalities of the corporation and the individual no longer exist and to adhere to that

separateness would work an injustice” it is appropriate to pierce the corporate veil. See Dana v. 313 Freemason Condo. Ass’n, 266 Va. 491, 500, 587 S.E.2d 548, 553-54 (2003); RF&P Corp. v. Little, 247 Va. 309, 316, 440 S.E.2d 908, 913 (1994) (“A corporate entity cannot be disregarded unless it is proved that the corporation is the alter ego, alias, stooge, or dummy of the individuals sought to be held personally accountable and that the corporation was a device or sham used to disguise wrongs, obscure fraud, or conceal crime.” (citation, alteration and internal quotation marks omitted)). This same standard applies in the context of a limited liability company. Moore v. Law Offices of Shapiro, Brown & Alt, LLP, 2015 U.S. Dist. LEXIS 106921, *18 n.5 (E.D. Va. 2015) (“Generally, Virginia law treats piercing the corporate veil of traditional corporations and other limited liability entities in the same manner.”); In re White, 412 B.R. at 864-65 (holding that a court may pierce the veil of a limited liability company and that the factors a court should consider when deciding whether to do so are consistent with those used in the context of a corporation); see also C.F. Trust, Inc. v. First Flight Ltd. P’ship, 266 Va. 3, 9, 580 S.E.2d 806, 809 (2003) (applying standard stated above in the context of a limited partnership and thus showing that this doctrine is not limited to use in the context of a corporation).

In addition to traditional veil piercing, in which a member may be held personally liable for a company’s liabilities, this Court has recognized reverse veil piercing, in which a company is held liable for a shareholder’s personal liabilities. C.F. Trust, 266 Va. at 10, 580 S.E.2d at 810. Generally, courts should consider the same factors in deciding whether to apply either doctrine. Id. at 12, 580 S.E.2d at 811.²

² We have held that in addition to the traditional veil piercing factors,

a court considering reverse veil piercing must weigh the impact of such action upon innocent investors A court considering reverse veil piercing must also consider the impact of such an act upon innocent secured and unsecured creditors. The court must also consider the availability of other remedies the creditor may pursue.

C.F. Trust, 266 Va. at 12-13, 580 S.E.2d at 811. Given that the complaint in the present case did not have any allegations involving these issues, these considerations are not before the Court and thus do not factor into our determination of whether the circuit court should have allowed reverse veil piercing in this case.

A.G. Dillard asked the circuit court to “[p]ierc[e] the corporate veil of the Related Entity Defendants and the Hausers so that A.G. Dillard may enforce its judgment against each of them, jointly and severally.” While A.G. Dillard’s prayer for relief is inartfully drafted, the complaint is clear that A.G. Dillard sought to use the piercing the corporate veil doctrine to reach the assets of Kedra Hauser, Robert Hauser and the Related Entity Defendants.

A.G. Dillard has a judgment against Stonehaus. In order to state a claim to reach Robert Hauser’s assets, A.G. Dillard had to allege sufficient facts to pierce Stonehaus’s corporate veil to reach Robert Hauser. The same is true regarding reaching Kedra Hauser. In order to sufficiently allege a claim to reach the assets of the Related Entity Defendants, allegedly controlled by Robert Hauser, which the complaint does not state are members in Stonehaus or vice versa, A.G. Dillard must have alleged (1) a traditional veil piercing claim against Robert Hauser and (2) a reverse veil piercing claim to reach the Related Entity Defendants through Robert Hauser.

Concerning whether A.G. Dillard sufficiently alleged a claim to pierce Stonehaus’s corporate veil to reach Robert Hauser, the complaint alleged that Stonehaus had no bank account, held no assets, and had been legally insolvent since at least February 2013. It alleged that its funds had been siphoned by, among others, “its ultimate controlling Member (Robert Hauser).” A.G. Dillard claimed that Robert Hauser owed Stonehaus more than \$160,000, but that Stonehaus had made no effort to collect this debt. These allegations claiming that Stonehaus had no assets and provided Robert Hauser, the person making decisions for Stonehaus, with financial benefits, imply that Stonehaus and Robert Hauser are not separate personalities. Further, the complaint implicitly alleged that considering Robert Hauser and Stonehaus as discrete parties would cause an injustice to A.G. Dillard in that it would not receive the benefit of its judgment against Stonehaus. Therefore, A.G. Dillard’s complaint stated a claim to pierce Stonehaus’s corporate veil to reach Robert Hauser.

Given that A.G. Dillard’s complaint alleged a claim to pierce Stonehaus’s corporate veil to reach Robert Hauser, we must decide whether A.G. Dillard alleged a claim to reverse pierce the corporate veils of the Related Entity Defendants through Robert Hauser. A.G. Dillard’s complaint stated, “Robert Hauser (or an entity controlled by him, such as Darby Holdings LLC) is a Member and/or Manager of each of Stonehaus and each of the Related Entity Defendants.” Viewed in the light most favorable to A.G. Dillard, the complaint alleges that Hauser is a

member of each of the Related Entity Defendants. The complaint states that Stonehaus, allegedly controlled by Robert Hauser, and the Related Entity Defendants “do not operate as separate personalities, as evidenced by Stonehaus’ admission that they advertise to the public as a single entity and by its admission that the funds and employees of each entity are used as though the funds and employees of every entity.” Viewing these allegations in the light most favorable to A.G. Dillard, the complaint implies that Robert Hauser, through his control over Stonehaus, also controls Stonehaus’s corporate alter egos, the Related Entity Defendants. Therefore, A.G. Dillard’s complaint stated a claim to reach the assets of the Related Entity Defendants by piercing Stonehaus’s corporate veil to reach Robert Hauser and then reverse piercing the Related Entity Defendants’ corporate veils through Robert Hauser.

Thus, the circuit court erred in granting a demurrer to Robert Hauser and the Related Entity Defendants regarding the piercing the corporate veil claim. Regarding Kedra Hauser, there is no allegation that she had any relationship with Stonehaus, other than indirectly through her husband. Therefore, her assets cannot be reached by piercing Stonehaus’s corporate veil, and the court appropriately granted her demurrer on the piercing the corporate veil claim.

Second, A.G. Dillard contends that the circuit court erred by sustaining the demurrer as to the fraudulent conveyance claim because it was “not required to specifically allege the exact date and dollar figure in the Complaint; it is sufficient to allege the approximate date, the means of transfer, the property being transferred, the party making the transfer and the party receiving the transfer.”

Code § 55-80 states, in relevant part,

Every . . . conveyance [or] assignment . . . given with intent to delay, hinder or defraud creditors, purchasers or other persons of or from what they are or may be lawfully entitled to shall, as to such creditors, purchasers or other persons, their representatives or assigns, be void.

The circuit court dismissed the fraudulent conveyance claim on the basis that a claim for fraudulent conveyance pursuant to Code § 55-80 has to “be pled with the same level of specificity as common law fraud.” It held that because “the Complaint only alleged the overall fraudulent conveyance scheme orchestrated by Stonehaus and failed to allege a specific transaction,” A.G. Dillard did not sufficiently state a claim under Code § 55-80. We disagree.

Code § 55-80 states that conveyances completed “with intent to delay, hinder or defraud creditors” are void as to those creditors. (Emphases added.) “We adhere to rules of statutory construction that discourage any interpretation of a statute that would render any part of it useless, redundant or absurd. Instead, we seek to read statutory language so as to give effect to every word.” Owens v. DRS Auto. Fantomworks, Inc., 288 Va. 489, 497, 764 S.E.2d 256, 260 (2014). Given that Code § 55-80 allows for the voiding of conveyances completed with intent to delay or hinder a creditor in addition to those completed with fraudulent intent, Code § 55-80 expands the class of transactions that may be voided beyond those committed with fraudulent intent. Thus, it would be contrary to the purpose of the statute to interpret it to require claims under it to meet the pleading specificity standards of common law fraud. See id. (noting that the purpose of the Virginia Consumer Protection Act was to expand a wronged consumer’s possible remedies beyond that of the common law and that to require parties raising Virginia Consumer Protection Act claims to satisfy the pleading standards of common law fraud would contradict this legislative intention). Therefore, the circuit court erred in ruling that A.G. Dillard was required to plead a claim for fraudulent conveyance under Code § 55-80 with the same level of specificity as common law fraud.

A plaintiff need only allege one “badge of fraud” to raise a prima facie case for fraudulent conveyance. Fox Rest Assocs., L.P. v. Little, 282 Va. 277, 285-86, 717 S.E.2d 126, 131-32 (2011). We have held that badges of fraud include:

- (1) retention of an interest in the transferred property by the transferor; (2) transfer between family members for allegedly antecedent debt; (3) pursuit of the transferor or threat of litigation by his creditors at the time of the transfer; (4) lack of or gross inadequacy of consideration for the conveyance; (5) retention or possession of the property by transferor; and (6) fraudulent incurrence of indebtedness after the conveyance.

Id. at 285, 717 S.E.2d at 132 (citations and internal quotation marks omitted).

Here, A.G. Dillard’s complaint alleged facts that if true, would show that the conveyances from Stonehaus to the Related Entity Defendants and the Hausers involved at least one badge of fraud. First, A.G. Dillard alleged that conveyances from Stonehaus to the Hausers and to the Related Entity Defendants were not made for valuable consideration. The complaint alleged that Stonehaus has paid the mortgage on the Hausers’ residence and that Robert Hauser

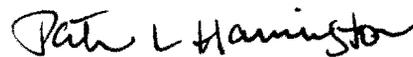
owes Stonehaus more than \$160,000, but that Stonehaus has made no effort to collect that debt. Further, A.G. Dillard alleged that Stonehaus has transferred any funds it receives as payment for a job to a Related Entity Defendant, and that Stonehaus has received no consideration for these conveyances. Additionally, A.G. Dillard implicitly alleged another badge of fraud, that Stonehaus conveyed assets while being pursued by a creditor, A.G. Dillard, when it stated that the underlying lawsuit recommenced in February 2013 and that the conveyances at issue occurred after that time. A.G. Dillard's complaint alleged badges of fraud associated with conveyances Stonehaus had made to the Hausers and the Related Entity Defendants, which established a prima facie claim for fraudulent conveyance. There was no need for A.G. Dillard to state its claim with any greater specificity. Its general allegations of a fraudulent conveyance scheme were sufficient. Therefore, the circuit court's granting of the demurrer as to A.G. Dillard's fraudulent conveyance claim was in error.

Accordingly, for the above reasons, we reverse the judgment of the circuit court as to Robert Hauser, Stonehaus and the Related Entity Defendants on the piercing of the corporate veil claim. Further, we reverse the circuit court's judgment as to all Defendants on the fraudulent conveyance claim. We affirm the judgment of the circuit court only as to Kedra Hauser on the piercing the corporate veil claim. We remand this case to the circuit court for further proceedings consistent with this order.

This order shall be certified to the said circuit court.

A Copy,

Teste:



Clerk