

IN THE COURT OF APPEALS OF TENNESSEE  
WESTERN SECTION AT JACKSON

RUBY J. MURPHY, )  
 )  
Plaintiff/Appellant, ) **Shelby Circuit No. 33465 T.D.**  
 )  
VS. ) **Appeal No. 02A01-9510-CV-00213**  
 )  
LEE JACKSON, MAIDA PEARSON, )  
and SHELBY BROADCASTING )  
CORPORATION, )  
 )  
Defendants/Appellees. )

APPEAL FROM THE CIRCUIT COURT OF SHELBY COUNTY  
AT MEMPHIS, TENNESSEE  
THE HONORABLE KAY S. ROBILIO, JUDGE

**FILED**

**October 22, 1996**

**Cecil Crowson, Jr.**  
Appellate Court Clerk

**WILLIAM C. GOSNELL**  
Memphis, Tennessee  
Attorney for Appellant

**CHARLES E. CARPENTER**  
Memphis, Tennessee  
Attorney for Appellees

**AFFIRMED**

**ALAN E. HIGHERS, J.**

**CONCUR:**

**W. FRANK CRAWFORD, P.J., W.S.**

**HOLLY KIRBY LILLARD, J.**

In this action, the Plaintiff, Rubye J. Murphy, filed suit against the Defendants, Lee Jackson (“Jackson”), Maida Pearson (“Pearson”), Shelby Broadcasting Corporation (“corporation”) and Larry Garrett (“Garrett”), in order to collect upon a promissory note which was signed by Garrett and was secured by an assignment of proceeds due Garrett as shareholder of the corporation. Jackson, Pearson and the corporation responded by filing a counterclaim for interpleader by which they sought to deposit into the court the proceeds due Garrett as shareholder of the corporation. Citing prior chancery court proceedings, the Counter-Defendant, Omega Investment Partners (“Omega”), filed a motion to dismiss in which it asserted that the circuit court lacked subject matter jurisdiction over the proceeds due Garrett as shareholder of the corporation because the chancery court first acquired jurisdiction over the proceeds. The circuit court granted the motion. Subsequently, the circuit court entered summary judgment in favor of Jackson, Pearson and the corporation. For the reasons stated hereafter, we affirm the judgment of the trial court.

### **FACTS AND PROCEDURAL HISTORY**

The Plaintiff loaned Garrett \$20,000.00. On July 7, 1989, Garrett signed and delivered a promissory note to the Plaintiff in the amount of \$20,000.00. The note was due and payable on or before January 3, 1990 with interest accruing at 10% per annum after maturity. On July 7, 1989, Garrett signed an assignment agreement as collateral security for the note. Under the assignment agreement, the Plaintiff was to receive \$20,000.00 in proceeds that were due Garrett as shareholder of the corporation. The assignment agreement was accepted by the corporation on July 7, 1989.

On April 16, 1990, the Plaintiff filed a complaint for breach of contract alleging that the corporation and the corporate officers, Jackson and Pearson, had refused to honor the assignment agreement. On February 21, 1991, the court below granted the corporation’s request for leave to amend its answer to assert a counterclaim for interpleader. In its counterclaim, the corporation admitted that the amount of funds due Garrett as shareholder of the corporation totalled \$14,099.82 and that the \$14,099.82 had not been distributed

due to the competing claims of the Plaintiff and Omega, which had served a chancery court garnishment on March 16, 1990. The corporation requested that the court allow it to deposit the sum of \$14,099.82 into the registry of either the circuit or chancery court.

On March 22, 1991, the court granted the Plaintiff's motion for default judgment against Garrett.

On January 11, 1993, Jackson and Pearson filed a motion to dismiss and/or for summary judgment asserting that the corporation had dissolved, that Jackson and Pearson no longer served in any capacity in the corporation and that all of the funds owed to Garrett as shareholder of the corporation had been paid into the registry of the circuit court as a condition precedent to dissolution.

On January 20, 1993, Omega filed a motion to dismiss. Within its motion Omega asserted that it had obtained a chancery court judgment against Garrett on September 26, 1988. Omega stated that it had issued garnishments against all assets belonging to Garrett, and such garnishments included the proceeds that Garrett was to receive as shareholder of the corporation. Omega stated that another creditor, the Plaintiff, had asserted her rights to the proceeds that Garrett was to receive as shareholder of the corporation. As a result, the corporation filed a separate interpleader action in chancery court naming Omega and the Plaintiff as parties. As grounds for dismissal, Omega argued that because jurisdiction first attached in the chancery court over the proceeds paid into the circuit court, the circuit court had no subject matter jurisdiction over such proceeds, and those proceeds should be paid into the registry of the chancery court for proper disposition.

The circuit court agreed and on July 7, 1993 granted Omega's motion to dismiss on the ground that the circuit court lacked subject matter jurisdiction over the funds deposited into the circuit court. The circuit court ordered that all funds held by the circuit court be deposited into the chancery court for ultimate disposition in accordance with the orders of chancery court.

On August 3, 1993, the Plaintiff filed a notice of appeal appealing the circuit court's order of July 7, 1993 which dismissed Omega from the action.

On December 20, 1993, this court entered an order dismissing the Plaintiff's appeal from the trial court's granting of Omega's motion to dismiss because the trial court's order was not final in that it did not dispose of all claims against all parties to the action pursuant to T.R.C.P. 54.02 and T.R.A.P. 3.

On December 1, 1994, Jackson, Pearson and the corporation filed a motion for an order clarifying the record on its prior motion to dismiss and/or summary judgment. On January 26, 1995, the court entered an order granting the Defendants' motion for an order clarifying the record wherein the court ruled that the corporation was not liable to the Plaintiff due to the fact that the corporation had dissolved and had paid all proceeds due Garrett as shareholder of the corporation into the registry of the chancery court pursuant to an order of the circuit court. The court further found that Jackson and Pearson, as officers of the corporation, had only been sued by the Plaintiff in their corporate, representative capacity and, thus, were not individually liable to the Plaintiff. The court granted the motion for summary judgment filed by Jackson, Pearson and the corporation and entered a final judgment as to all parties.

## **LAW**

The two issues before this court are as follows:

- 1) whether the court below erred in granting Omega's motion to dismiss; and
- 2) whether the court below improperly granted summary judgment on the Plaintiff's breach of contract claim against Jackson and Pearson.

Regarding the first issue, the Plaintiff contends that the trial court erred in entering a judgment in favor of Omega. We note, however, that the circuit court did not award a \$14,000.00 judgment in favor of Omega. Instead, the circuit court granted Omega's motion to dismiss based on the court's conclusion that it lacked jurisdiction over the subject matter

of the lawsuit, the \$14,000.00 in proceeds. The circuit court then directed that the funds be deposited into the chancery court.

In cases where there exists concurrent jurisdiction, the court which first takes jurisdiction thereby acquires exclusive jurisdiction of the case, and it is appropriate for the second case to be dismissed. Robinson v. Easter, 344 S.W.2d 365, 366 (Tenn. 1961); Wilson v. Grantham, 739 S.W.2d 776, 777 (Tenn. Ct. App. 1986). In the present case, the Plaintiff does not dispute Omega's account of the chancery court proceedings. Because the chancery court first acquired jurisdiction regarding the disposition of the proceeds owed Garrett as shareholder of the corporation, the chancery court has jurisdiction over any claims to these proceeds. We, therefore, affirm the circuit court's order granting Omega's motion to dismiss.

The Plaintiff also argues that the circuit court improperly granted summary judgment on the Plaintiff's breach of contract claim because the record contains evidence that Jackson and Pearson "acting as individuals and without a shareholders meeting or a shareholders resolution made a material change in the distribution formula which affected the Plaintiff's rights."

The principle of piercing the corporate veil is to be applied with great caution and not precipitately, since there is a presumption of corporate regularity. Muroll Gesellschaft M.B.H. v. Tennessee Tape, Inc., 908 S.W.2d 211, 213 (Tenn. Ct. App. 1995); Schlater v. Haynie, 833 S.W.2d 919, 924 (Tenn. Ct. App. 1991). There is a presumption that a corporation is a distinct legal entity, wholly separate and apart from its shareholders, officers, directors or affiliated corporations, and the party wishing to negate the existence of such separate entity has the burden of proving facts sufficient to justify piercing the corporate veil. Schlater, 833 S.W.2d at 925. While a corporation will generally be looked upon as a legal entity, the corporate veil may be pierced in appropriate, special, unusual or compelling circumstances. Id. Where the corporation is created or used for an improper purpose or where the corporation has been abused, the courts may disregard the

corporate entity and pierce the corporate veil. Id.

There is no general rule that stockholders, directors or officers of a corporation are liable for its debts merely because they controlled or dominated the corporation. Id. at 924. A corporation is a person separate and apart from the stockholders, and the burden of an obligation of the corporation is not a burden which may be regarded as falling upon the stockholders, although it indirectly affects them. General Tel. Co. of Southeast v. Boyd, 343 S.W.2d 872 (Tenn. 1961). Ordinarily, a director of a corporation is an agent of the corporation and is liable only to the corporation. Schlater, 833 S.W.2d at 924. To become liable to a creditor, there must be some violation of statutory duty or other conduct which establishes a privity of contract with or tortious injury to the creditor for which an action will lie. Id.; Merriman v. Smith, 599 S.W.2d 548 (Tenn. Ct. App. 1979). Where a creditor is well aware of a corporation's status, the controlling stockholders will not be individually liable under corporate contracts with the creditor. Schlater, 833 S.W.2d at 925.

In the present case, there is no evidence that the corporation was created or used for an improper purpose, no evidence that the corporate entity was abused and no evidence that Jackson and Pearson acted in derogation of their corporate duties. Further, in her complaint the Plaintiff has failed specifically to plead facts which would sustain a cause of action against Jackson and Pearson in an individual capacity. The complaint's allegations relate only to actions taken by Jackson and Pearson on behalf of the corporation. We, therefore, agree with the circuit court's conclusion that Jackson and Pearson were sued in only a corporate, representative capacity.

The judgment of the trial court is hereby affirmed. Costs on appeal are taxed to Appellant, for which execution may issue if necessary.

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HIGHERS, J.

CONCUR:

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CRAWFORD, P.J., W.S.

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LILLARD, J.