IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
January 4, 2023 Session

CHARLES YOUREE, JR. v. RECOVERY HOUSE OF EAST TENNESSEE, LLC ET AL.

Appeal from the Chancery Court for Davidson County
No. 20-1136-II Anne C. Martin, Chancellor

No. M2021-01504-COA-R3-CV

A landlord leased property to company A. When company A breached the lease, the landlord filed suit against the company to recover monetary damages. A default judgment was entered against company A and, when company A failed to make any payments on that judgment, the landlord filed suit against company B and company C. The landlord alleged that the corporate veil should be pierced to hold company B and company C liable for company A's debt because they were the alter egos of company A. After a default judgment was entered against company B and company C, they motioned to have the judgment set aside because the landlord's complaint failed to allege sufficient facts to state a claim for piercing the corporate veil. The trial court denied the motion to set aside, and the two companies appealed. Discerning that the complaint does not state sufficient factual allegations to articulate a claim for piercing the corporate veil, we reverse and remand.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed and Remanded

ANDY D. BENNETT, J., delivered the opinion of the Court, in which FRANK G. CLEMENT, JR., P.J., M.S., and W. NEAL MCBRAYER, J., joined.

Donald N. Capparella and Tyler Chance Yarbro, Nashville, Tennessee, and Edward Griffith, New York, New York, for the appellants, Recovery House of East Tennessee, LLC, and RHT Holdings, LLC.

Benjamin Ealey Goldammer, Nashville, Tennessee, for the appellee, Charles Youree, Jr.

OPINION

FACTUAL AND PROCEDURAL BACKGROUND

Charles Youree, Jr., owns an office building located at 785 Old Hickory Boulevard, Nashville, Tennessee. In March 2018, Mr. Youree entered into an agreement with Recovery Solutions Network, LLC ("RSN") to lease space in the building to RSN for operating an intake call center that served its two sister companies, RHT Holdings, LLC ("RHT") and Recovery House of East Tennessee, LLC ("Recovery House"). When RSN breached the lease agreement by, among other things, abandoning the premises and failing to pay rent, Mr. Youree filed suit against RSN and obtained a default judgment in the amount of $56,267.46 ("First Default Judgment"). RSN made no payments on the First Default Judgment.

On November 16, 2020, Mr. Youree initiated the current lawsuit against RHT and Recovery House (collectively, "Defendants") seeking collection of the First Default Judgment from RHT and Recovery House based on allegations that these entities are the "functional alter egos" of RSN. Defendants were served with the complaint and summons in the current lawsuit on November 20, 2020. Initially, Jeffrey Cadle represented Defendants, but the trial court entered an order on February 2, 2021, permitting him to withdraw and ordering Defendants to engage new counsel by March 4, 2021. When Defendants failed to hire new counsel and to file a responsive pleading, Mr. Youree filed a motion for default judgment on March 11, 2021. Defendants filed no response to the motion, and the trial court entered an order on April 9, 2021 ("Second Default Judgment"), granting default judgment to Mr. Youree.

On May 2, 2021, Defendants filed a motion to vacate the Second Default Judgment pursuant to Tenn. R. Civ. P. 60.02. In a memorandum of law setting forth their arguments, Defendants asserted that the Second Default Judgment should be set aside because it was the result of excusable neglect, that they had meritorious defenses, and that the complaint "fail[ed] to state a claim for veil piercing/alter ego liability upon which relief can be granted." Thereafter, through a series of agreed orders, Defendants withdrew all arguments for setting aside the Second Default Judgment except their argument that the complaint failed to state a claim for veil piercing/alter ego liability. The crux of Defendants' argument was that the complaint failed to sufficiently plead a claim for piercing the corporate veil to hold Defendants liable for RSN's debt under the alter ego theory because the complaint contained no allegation that Defendants exercised "complete dominion" over RSN "to commit fraud or wrong" and no allegation that "the aforesaid control and breach of duty . . . proximately cause[d] the injury or unjust loss complained of."

After hearing arguments on the motion to set aside, the trial court entered an order denying the motion based on its determination that the complaint sufficiently stated a claim for piercing the corporate veil to hold Defendants liable because it alleged facts establishing

several of the "*Allen* factors" identified in *Federal Deposit Insurance Corp. v. Allen*, 584 F. Supp. 386 (E.D. Tenn. 1984). The court further held that the Second Default Judgment should not be set aside because Defendants failed to establish that the default was not willful.

Defendants timely appealed and present two issues for our review. We restate those issues as follows: (1) whether the trial court erred in entering the Second Default Judgment against Defendants by piercing the corporate veil and (2) if the corporate veil was properly pierced, whether the trial court abused its discretion in denying Defendants' motion to set aside the judgment pursuant to Tenn. R. Civ. P. 60.02.

ANALYSIS

I. Default Judgment

Defendants' contention that the trial court abused its discretion in denying their motion to set aside the Second Default Judgment relies primarily on their challenge to the validity of the Second Default Judgment. According to Defendants, the complaint fails to allege facts sufficient to recover on an alter ego/piercing the corporate veil theory. The propriety of a trial court's denial of a motion "to set aside a default judgment depends in part on whether the default judgment was properly entered in the first place." *H.G. Hill Realty Co., L.L.C. v. Re/Max Carriage House, Inc.*, 428 S.W.3d 23, 29-30 (Tenn. Ct. App. 2013) (citing *Yearwood, Johnson, Stanton & Crabtree, Inc. v. Foxland Dev. Venture*, 828 S.W.2d 412, 413 (Tenn. Ct. App. 1991)). Thus, we begin by examining whether Mr. Youree's complaint contains sufficient factual allegations to support entry of a default judgment.

Under Tenn. R. Civ. P. 55.01, a litigant may move the court for entry of a default judgment when an opposing party fails to timely file an answer to the complaint. In general, "'the entry of a default judgment has the effect of an answer admitting the well-pleaded material allegations of fact contained in the adversary's pleading and fair inferences therefrom.'" *H.G. Hill*, 428 S.W.3d at 30 (quoting Lawrence A. Pivnick, TENNESSEE CIRCUIT COURT PRACTICE, § 27.2 (2012)); *see also Clark v. Sputniks, LLC*, 368 S.W.3d 431, 435 (Tenn. 2012) ("By allowing default judgments to be entered against them, the defendants impliedly admitted as true all the material factual allegations contained in the complaints, except the amount of the plaintiffs' unliquidated damages."). To be "sufficient to sustain default judgment, the complaint 'need not contain detailed allegations of all the facts giving rise to the claim,' but it 'must contain sufficient factual allegations to articulate a claim for relief.'" *H.G. Hill*, 428 S.W.3d at 31 (quoting *Plunk v. Gibson Guitar Corp.*, No. M2012-00882-COA-R3-CV, 2013 WL 2420539, at *3 n.3 (Tenn. Ct. App. May 31, 2013)). Furthermore, the complaint "'must contain direct allegations on every material point necessary to sustain a recovery on any legal theory . . . or contain allegations from which an inference may fairly be drawn that evidence on these

material points will be introduced at trial.'" *Id.* (quoting *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 427 (Tenn. 2011)). We must, therefore, consider the cause of action asserted against Defendants and the factual allegations contained in Mr. Youree's complaint to support that cause of action.

There is no dispute that the First Default Judgment, upon which the present lawsuit was initiated, was entered against RSN, not Defendants. Furthermore, it is undisputed that Defendants were not a party to the lease underlying the First Default Judgment. As a result, the sole basis for entry of a default judgment against Defendants, holding them liable for RSN's debt, is through the doctrine of piercing the corporate veil, which we have explained as follows:

> "Conditions under which the corporate entity will be disregarded vary according to the circumstances present in the case, and the matter is particularly within the province of the trial court. *Muroll Gesellschaft M.B.H. v. Tennessee Tape, Inc.*, 908 S.W.2d 211, 213 (Tenn. Ct. App. 1995) (citing *Electric Power Bd. of Chattanooga v. St. Joseph Valley Structural Steel Corp.*, 691 S.W.2d 522 (Tenn.1985)); *Piper v. Andrews*, No. 01A01-9612-CV-00570, 1997 WL 772127, at *3 (Tenn. Ct. App. Dec. 17, 1997) (Perm. app. denied June 8, 1998). Thus, the question of when an individual should be held liable for corporate obligations is largely a factual one. "Each case involving disregard of the corporate entity must rest upon its special facts." *Muroll Gesellschaft*, 908 S.W.2d at 213; *Schlater v. Haynie*, 833 S.W.2d 919, 925 (Tenn. Ct. App. 1991).
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> There is a presumption that a corporation is a distinct legal entity, wholly separate and apart from its shareholders, officers, directors, or affiliated corporations. In an appropriate case and in furtherance of the ends of justice, the separate identity of a corporation may be discarded and the individual or individuals owning all its stock and assets will be treated as identical to the corporation. *Muroll*, 908 S.W.2d at 213; *Schlater*, 833 S.W.2d at 925; *see also Fidelity Trust Co. v. Service Laundry Co.*, 160 Tenn. 57, 61, 22 S.W.2d 6, 7-8 (1929); *see generally E.O. Bailey & Co. v. Union Planters Title Guar. Co.*, 33 Tenn. App. 439, 232 S.W.2d 309 (1950). Discarding the fiction of the corporate entity, or piercing the corporate veil, is appropriate when the corporation is liable for a debt but is without funds to pay the debt, and the lack of funds is due to some misconduct on the part of the officers and directors. *Muroll Gesellschaft*, 908 S.W.2d at 213; *S.E.A., Inc. v. Southside Leasing Co.*, *et al.,* No. E2000-00631-COA-R3-CV, 2000 WL 1449852, at *9 (Tenn. Ct. App. Sept. 29, 2000) (no Tenn. R. App. P. 11 filed); *Emergicare Consultants, Inc. v. Woolbright*, No. W1998-00659-COA-R3-CV, 2000 WL 1897350, at *2 (Tenn. Ct. App. Dec. 29, 2000) (Perm. app. denied. May 14, 2001).

> In those circumstances, courts may pierce the corporate veil to find the "true owners of the entity" liable, *Muroll Gesellschaft*, 908 S.W.2d at 213, or "to impose liability against a controlling shareholder who has used the corporate entity to avoid his legal obligations." *Manufacturers Consolidation Serv., Inc. v. Rodell*, 42 S.W.3d 846, 866 (Tenn. Ct. App. 2000). Our courts will disregard the corporation as a separate entity upon a showing that the corporation is a sham or dummy or such action is necessary to accomplish justice. *Muroll Gesellschaft*, 908 S.W.2d at 213; *Tenn. Racquetball Invs., Ltd. v. Bell*, 709 S.W.2d 617, 619 (Tenn. Ct. App. 1986); *Oak Ridge Auto Repair Serv. v. City Fin. Co.*, 57 Tenn. App. 707, 711, 425 S.W.2d 620, 622 (1967); *Fidelity Trust Co.*, 160 Tenn. at 61, 22 S.W.2d at 7-8; *Emergicare Consultants, Inc.*, 2000 WL 1897350, at *2; *Piper*, 1997 WL 772127, at *3."

Edmunds v. Delta Partners, L.L.C., 403 S.W.3d 812, 827-28 (Tenn. Ct. App. 2012) (quoting *VP Bldgs. Inc. v. Polygon Grp.*, No. M2001-00613-COA-R3-CV, 2002 WL 15634, at *4-5 (Tenn. Ct. App. Jan. 8, 2002)).[1] "[C]ourts in Tennessee are cautioned that the doctrine of piercing the corporate veil should be applied only in 'extreme circumstances to prevent the use of corporate entity to defraud or perform illegal acts.'" *H.G. Hill*, 428 S.W.3d at 33 (quoting *Pamperin v. Streamline Mfg., Inc.*, 276 S.W.3d 428, 437 (Tenn. Ct. App. 2008).

Because "'the entry of a default judgment has the effect of an answer admitting the well-pleaded material allegations of fact contained in the adversary's pleading and fair inferences therefrom,'" resolution of this case turns on whether Mr. Youree's complaint avers facts sufficient to pierce the corporate veil to hold Defendants liable for RSN's debt. *H.G. Hill*, 428 S.W.3d at 31 (quoting *H.G. Hill*, 428 S.W.3d at 30 (quoting Pivnick, *supra*, at § 27.2). The complaint contains the following factual allegations:

> 5. Recovery House is engaged in providing treatment of substance abuse addiction in the State of Tennessee. Recovery House operates its Tennessee treatment center at property owned by RHT (which is one of its affiliates) at 105 Caldwell Circle, Oliver Springs, Anderson County, Tennessee 37840 ("RHT Property"). Both Recovery House and RHT are, on information and belief, affiliated with and/or subsidiaries of Recovery Solutions Network, LLC ("RSN").
> 6. Youree is the owner of a commercial office building located at 785 Old Hickory Boulevard, Nashville, Davidson County, Tennessee 37212 ("Building").

[1] Defendants are limited liability companies rather than corporations, but "[t]he doctrine of piercing the corporate veil applies equally to cases in which a party seeks to pierce the veil of a limited liability company." *Edmunds*, 403 S.W.3d at 828.

7. Youree entered into a March 1, 2018 Lease Agreement ("Lease") pursuant to which he agreed to lease Suite 300 in the Building to RSN. On information and belief, RSN and/or Recovery House used Suite 300 as a phone call center for the addiction treatment center operated at the RHT Property.

8. RSN breached the Lease by failing to pay rent, by abandoning the premises and by failing to perform improvements to the premises required by the Lease. These breaches caused Youree over $50,000.00 in damages.

9. Youree filed suit against RSN associated with its breaches of the Lease in the case styled Charles Youree, Jr. v. Recovery Solutions Network, LLC d/b/a Recovery Solutions Network of Nashville, LLC, Davidson County Chancery Court, 19-1420-II ("First Lawsuit").

10. On February 7, 2020, Youree obtained a Default Judgment against RSN in the First Lawsuit in the principal amount of $56,267.46 ("Judgment"). A copy of the Judgment is attached as **Exhibit 1**. No payments have been made on the Judgment to date.

11. RHT and Recovery House are the functional alter egos of RSN and are each liable for the Judgment.

12. RHT, Recovery House and RSN use the same offices for their business. For example, Recovery House and RHT each have their principal office at 1712 Pioneer Avenue, Cheyenne, Wyoming 82001.

13. RHT, Recovery House and RSN employ the same employees. For example, on its website (**Exhibit 2**), RSN touts a single roster of personnel for all of its subsidiary locations.

14. RHT, Recovery House and RSN are used as the instrumentality or business conduit for one another. In addition to the single roster of employees, Recovery House markets its Tennessee location (at the RHT Property) on RSN's website (**Exhibit 3**).

15. On information and belief, RHT, Recovery House and RSN fail to maintain arms-length relationships amongst one another and have overlapping ownership.

In considering the sufficiency of the complaint, the trial court relied on the factors set forth in *Federal Deposit Insurance Corp. v. Allen*, 584 F. Supp. 386, 397 (E.D. Tenn. 1984):

> Factors to be considered in determining whether to disregard the corporate veil include not only whether the entity has been used to work a fraud or injustice in contravention of public policy, but also: (1) whether there was a failure to collect paid in capital; (2) whether the corporation was grossly undercapitalized; (3) the nonissuance of stock certificates; (4) the sole ownership of stock by one individual; (5) the use of the same office or business location; (6) the employment of the same employees or attorneys; (7) the use of the corporation as an instrumentality or business conduit for an

> individual or another corporation; (8) the diversion of corporate assets by or to a stockholder or other entity to the detriment of creditors, or the manipulation of assets and liabilities in another; (9) the use of the corporation as a subterfuge in illegal transactions; (10) the formation and use of the corporation to transfer to it the existing liability of another person or entity; and (11) the failure to maintain arms length relationships among related entities.

After concluding that the *Allen* factors[2] controlled its determination, the court found that the factual allegations in the complaint sufficiently articulated a claim for piercing the corporate veil to hold Defendants liable for RSN's debt because the factual allegations satisfied four of the factors. Specifically, the court found that the alleged facts in paragraphs 12 through 15 established factors 5, 6, 7, and 11.

Defendants contend that simply alleging several of the *Allen* factors is not sufficient to state such a claim because the factors alleged must still establish the three required elements for piercing the corporate veil that were set forth by our Supreme Court in *Continental Bankers Life Insurance Co. of the South v. Bank of Alamo*, 578 S.W.2d 625, 632 (Tenn. 1979):

> (1) The parent corporation, at the time of the transaction complained of, exercises complete dominion over its subsidiary, not only of finances, but of policy and business practice in respect to the transaction under attack, so that the corporate entity, as to that transaction, had no separate mind, will or existence of its own.
> (2) Such control must have been used to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or a dishonest and unjust act in contravention of third parties' rights.
> (3) The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

In other words, Defendants' argument is that the proper analysis is not to consider the number of *Allen* factors alleged but to determine whether the specific factors alleged establish the three required elements for piercing the corporate veil. We agree with Defendants' contention that the elements in *Continental Bankers* apply in this case. Defendants' argument that the *Allen* factors also have some application in this case, however, is flawed because, as we will discuss below, the *Continental Bankers* test and the *Allen* factors are separate and distinct tests.

[2] The Tennessee Supreme Court has referred to these factors as "the Allen factors." *See Rogers v. Louisville Land Co.*, 367 S.W.3d 196, 216 (Tenn. 2012)

In cases, like the one at bar, that involve a parent corporation and a subsidiary corporation, "the actions of [the] parent corporation may be attributable to [the] subsidiary corporation (1) when one corporation is acting as an agent for the other or (2) when the two corporations are essentially alter egos of each other." *Gordon v. Greenview Hosp., Inc.*, 300 S.W.3d 635, 652 (Tenn. 2009) (citing *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1134 (9th Cir. 2003); 1 Robert C. Casad & William M. Richman, *Jurisdiction in Civil Actions* § 4-3[5] (3d ed. 2004)). Mr. Youree sought to pierce the corporate veil with the second method, arguing that Defendants are the "functional" alter egos of RSN. An alter ego relationship "is typified by the parent corporation's control of the subsidiary corporation's internal affairs or daily operations." *Id.* (citing *Doe v. Unocal Corp.,* 248 F.3d 915, 926 (9th Cir. 2001)). Thus, when the alter ego theory is alleged in these types of veil piercing cases, courts decline "to disregard the presumption of corporate separateness in the absence of evidence of the parent corporation's domination of the day-to-day business decisions of the subsidiary corporation." *Id.*

In *Continental Bankers*, the Tennessee Supreme Court held that the three elements quoted earlier in this opinion are required to pierce the corporate veil when a parent corporation uses a subsidiary corporation as a mere "tool" or "instrumentality." *Cont'l Bankers*, 578 S.W.2d at 632-33. The *Continental Bankers* holding has not been overruled in the forty-four years since it was issued, as evidenced by our Supreme Court's continued citation to it in *Gordon v. Greenview Hospital, Inc.*:

> In sum, the presumption of corporate separateness may be overcome by demonstrating that the parent corporation "exercises complete dominion over its subsidiary, not only of finances, but of policy and business practice in respect to the transaction under attack, so that the corporate entity, as to that transaction, had no separate mind, will or existence of its own." *Cont'l Bankers Life Ins. Co. of the S.*, 578 S.W.2d at 632.

Gordon, 300 S.W.3d at 653. This Court has also relied on the *Continental Bankers* test to determine whether to pierce the corporate veil to hold a parent corporation liable for the debts of a subsidiary under the alter ego theory. *See Hatfield v. Allenbrooke Nursing & Rehab. Ctr., LLC*, No. W2017-00957-COA-R3-CV, 2018 WL 3740565, at *36-38 (Tenn. Ct. App. 2018), *perm. app. denied* (Tenn. Jan. 17, 2019) . Furthermore, this Court has expanded the *Continental Bankers* holding to recognize that the three elements "are also required in an action to hold the individual owner of a corporation liable for the debts of the corporation under the alter ego theory." *Edmunds*, 403 S.W.3d at 829 (citing *Island Brook Homeowners Ass'n, Inc. v. Aughenbaugh*, No. M2006-02317-COA-R3-CV, 2007 WL 2917781, at *6 (Tenn. Ct. App. Oct. 5, 2007); *Tenn. Racquetball Invs., Ltd. v. Bell*, 709 S.W.2d 617, 622 (Tenn. Ct. App. 1986)); *see also Pamperin*, 276 S.W.3d at 438. Thus, the *Continental Bankers* test remains viable.

This begs the question of when do the *Allen* factors apply? In *CAO Holdings, Inc. v. Trost*, 333 S.W.3d 73, 88 (Tenn. 2010), our Supreme Court held that "courts may, in appropriate circumstances, pierce the corporate veil and attribute the actions of a corporation to its shareholders." In a subsequent case, the Court explained the applicable law in situations where a party seeks to pierce the corporate veil to hold a corporation's shareholder personally liable for a corporation's acts or debts:

> Ordinarily, a shareholder of a corporation is not personally liable for the acts of the corporation. *See Oceanics Sch., Inc. v. Barbour*, 112 S.W.3d 135, 140 (Tenn. Ct. App. 2003) ("A corporation is presumptively treated as a distinct entity, separate from its shareholders, officers, and directors.") (citing *Schlater v. Haynie*, 833 S.W.2d 919, 925 (Tenn. Ct. App. 1991)). In appropriate circumstances, however, the corporate veil may be pierced and the acts of a corporation attributed to a shareholder. *CAO Holdings, Inc. v. Trost*, 333 S.W.3d 73, 88 (Tenn. 2010). "The corporate entity generally is disregarded where it is used as a cloak or cover for fraud or illegality, to work an injustice, to defend crime, or to defeat an overriding public policy, or where necessary to achieve equity." 18 AM.JUR.2d *Corporations* § 57 (2004) (footnotes omitted).

Rogers v. Louisville Land Co., 367 S.W.3d 196, 214-15 (Tenn. 2012). The Tennessee Supreme Court has "outlined a completely different test to be used where the corporate veil is pierced to reach a shareholder"—the *Allen* factors. *Hatfield*, 2018 WL 3740565, at *38 (citing *Rogers*, 367 S.W.3d. at 215); *see also Trost*, 333 S.W.3d at 88 n.13 (citing *Allen*, 584 F.Supp. at 397).

Since the adoption of the *Allen* factors, "Tennessee's courts have consistently used [those factors] to determine whether a corporation's separate legal identity should be ignored." *Trost*, 333 S.W.3d at 88. Courts have observed, however, that "'the multi-factor test articulated in *Rogers* [*i.e.*, the *Allen* factors] is largely distinct from the test articulated in *Continental Bankers*.'" *StarLink Logistics Inc. v. ACC, LLC*, No.1:18-cv-00029, 2022 WL 17724143, at *7 (M.D. Tenn. Dec. 15, 2022) (quoting *Hatfield*, 2018 WL 3740565, at *38). The distinction is that there is "a difference between factors (which are circumstances to be *balanced*) and prerequisites (which are requirements that must be *satisfied*). And '[t]he distinction between factors and prerequisites is one with a difference.'" *Id.* Notably, "unlike the (mandatory) prerequisites set forth in *Continental Bankers*, '[n]o single [*Allen*] factor among those listed is conclusive, nor is it required that all of these factors support piercing the corporate veil; typically, courts will rely on a combination of the factors in deciding the issue.'" *Id.* (quoting *Rogers*, 367 S.W.3d at 215). Courts, therefore, "have held that the *Continental Bankers* test applies to efforts to pierce the veil between parent and subsidiary corporations [and to reach the owner of a corporation], while the *Allen* factors are considered when seeking to hold a shareholder personally liable." *Layne Christensen Co. v. City of Franklin, Tenn.*, 449 F. Supp. 3d 748, 760-61 (M.D. Tenn. 2020)

(citing *Hatfield*, 2018 WL 3740565, at *38; *Schlater v. Haynie*, 833 S.W.2d 919, 925 (Tenn. Ct. App. 1991)).

As mentioned above, Mr. Youree alleged that the corporate veil should be pierced to hold Defendants liable for RSN's debt because the entities had a parent/subsidiary relationship. The complaint contains no allegation that the corporate veil should be pierced to hold Defendants individually liable as shareholders of RSN. Thus, based on the principles set forth above, we conclude that the *Continental Bankers* test, not the *Allen* factors, applies in determining whether the complaint sufficiently alleged facts to establish a claim for piercing the corporate veil under the alter ego theory.

In this case, Mr. Youree alleged only the following facts in regard to his claim for piercing the corporate veil under the alter ego theory: (1) that Defendants and RSN "use the same offices for their business," (2) that Defendants and RSN have the same employees, (3) that Defendants and RSN "are used as the instrumentality or business conduit for one another," and (4) that Defendants and RSN "fail to maintain arms-length relationships amongst one another and have overlapping ownership." Even taking these factual allegations as true, we conclude that they are insufficient to articulate a claim for relief. *See Clark*, 368 S.W.3d at 435 ("By allowing default judgments to be entered against them, the defendants impliedly admitted as true all the material factual allegations contained in the complaints, except the amount of the plaintiffs' unliquidated damages."). None of these facts constitute "direct allegations," *H.G. Hill*, 428 S.W.3d at 31, that Defendants exercised complete dominion over RSN, that Defendants used that control "to commit fraud or wrong," or that "[t]he aforesaid control and breach of duty . . . proximately cause[d] the injury or unjust loss complained of." *Cont'l Bankers*, 578 S.W.2d at 632. And "'an inference may [not] fairly be drawn'" from these factual allegations "'that evidence on these material points will be introduced at trial.'" *H.G. Hill*, 428 S.W.3d at 31 (quoting *Webb*, 346 S.W.3d at 427).

We must, therefore, conclude that the Second Default Judgment was not properly granted because the complaint failed to allege sufficient facts to articulate a claim for piercing the corporate veil to hold Defendants liable for RSN's debt.[3] Thus, the trial court erred in denying Defendants' request to set aside the Second Default Judgment.[4]

[3] On appeal, Mr. Youree attempts to show that his complaint sufficiently articulated a claim for piercing the corporate veil by relying on evidence produced in discovery. However, he never amended his complaint to add factual allegations relating to this evidence. Our review is limited to the allegations in the complaint. We, therefore, decline to consider his arguments relating to the additional evidence.

[4] In denying Defendants' motion to set aside the Second Default Judgment, the trial court also based its decision on its finding that Defendants failed to show that their failure to respond to the complaint was not willful. On appeal, Mr. Youree devotes a significant part of his appellate brief to arguing that we should affirm the trial court's denial based on this finding. However, in light of our conclusion that the Second Default Judgment never should have been granted in the first place, we need not consider whether Defendants were entitled to relief from that judgment under Tenn. R. Civ. P. 60.02. *See H.G. Hill.*, 428

II. Dismissal

Finally, Defendants request that we dismiss the complaint pursuant to Tenn. R. Civ. P. 12.02(6). We believe this is a matter best addressed in the trial court on remand because "[a] plethora of cases illustrates the willingness of Tennessee courts to permit amendments under Rule 15.01." *Freeman Indus. LLC v. Eastman Chem. Co.*, 227 S.W.3d 561, 566 (Tenn. Ct. App. 2006). Moreover, "'when the court grants a motion to dismiss for failure to state a claim, only extraordinary circumstances would prohibit the plaintiff from exercising the right to amend its complaint.'" *Id.* at 566-67 (quoting *Richland Country Club, Inc. v. CRC Equities, Inc.*, 832 S.W.2d 554, 559 (Tenn. Ct. App. 1991)). Defendants' request to dismiss the complaint is denied.

CONCLUSION

The judgment of the trial court is reversed, and the matter is remanded to the trial court for further proceedings consistent with this opinion. Costs of this appeal are assessed against the appellee, Charles Youree, Jr., for which execution may issue if necessary.

_/s/ Andy D. Bennett_____
ANDY D. BENNETT, JUDGE

S.W.3d at 36 (determining whether the defendant was entitled to relief under Tenn. R. Civ. P. 60.02 only after determining that the default judgment at issue had been properly entered). As the *H.G. Hill* court succinctly stated, "[t]he propriety of a trial court's denial of a request to set aside a default judgment depends in part on whether the default judgment was properly entered in the first place." *H.G. Hill*, 428 S.W.3d at 29-30.