

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
July 6, 2022 Session

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LARRY HASTY v. GREYHAWK DEVELOPMENT CORPORATION

**Appeal from the Chancery Court for Williamson County
No. 43307-J Deanna B. Johnson, Judge**

No. M2021-01217-COA-R3-CV

A plaintiff obtained a default judgment against a corporation. Ten months later, the plaintiff moved to pierce the corporate veil and enforce the judgment against an alleged alter ego of the corporation. The trial court denied the motion. Because the judgment was final and the alleged alter ego was never made a party to the action, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

W. NEAL MCBRAYER, J., delivered the opinion of the court, in which D. MICHAEL SWINEY, C.J., and FRANK G. CLEMENT, JR., P.J., M.S., joined.

Ben M. Rose, Brentwood, Tennessee, for the appellant, Larry J. Hasty.

M. Andrew Pippenger and Daniel H. Puryear, Nashville, Tennessee, for the appellee, Edmond R. Queen.

OPINION

I.

After Blue Water Bay at Center Hill, LLC sued Larry J. Hasty for breach of a guaranty, Mr. Hasty filed a third-party action against the principal obligor, Greyhawk Development Corporation, seeking indemnification. The trial court summarily dismissed the claims against Mr. Hasty. *See Blue Water Bay at Ctr. Hill, LLC v. Hasty*, No. M2020-01336-COA-R3-CV, 2023 WL 4199077, at *1 (Tenn. Ct. App. June 26, 2023). Then, on August 31, 2020, the court issued a default judgment against Greyhawk on Mr. Hasty's

indemnity claim.¹ Neither party appealed the entry of the default judgment. Thirty days later, the judgment was final.

During post-judgment discovery, Mr. Hasty learned that Greyhawk had no assets. So he filed a motion to pierce the corporate veil. He asserted that Mr. Queen, a shareholder of Greyhawk, used the corporation as a sham to perpetuate fraud. And he asked the court to authorize execution of the Greyhawk judgment against Mr. Queen as the corporation's alter ego. He submitted Mr. Queen's post-judgment deposition testimony in support of his motion.

Mr. Queen moved to dismiss the motion. Alternatively, he asked the court to rule on his procedural objections to the motion before it considered whether to pierce the corporate veil. Among other things, he argued that he was not named in the judgment and none of the pleadings in the indemnification action had alleged any facts to support a veil-piercing claim. And now that the judgment was final, it was too late to amend the pleadings or the judgment.

The trial court agreed with Mr. Queen. It denied the motion as improper. In the court's view, it lacked the authority to enforce the judgment against a non-party. Mr. Hasty filed his motion ten months after entry of the default judgment. It was too late to amend the pleadings or the judgment to add a new party or to raise new issues. Mr. Hasty's only recourse was to file a separate action against Mr. Queen seeking to pierce the corporate veil.

II.

A corporation is a distinct legal entity, presumed "separate from its shareholders, officers, and directors." *Pamperin v. Streamline Mfg., Inc.*, 276 S.W.3d 428, 437 (Tenn. Ct. App. 2008). Our courts disregard a corporation's separate legal status only "with great caution." *Schlater v. Haynie*, 833 S.W.2d 919, 925 (Tenn. Ct. App. 1991). Courts do so when "convinced that the separate corporate entity 'is a sham or a dummy' or that disregarding the separate corporate entity is 'necessary to accomplish justice.'" *CAO Holdings, Inc. v. Trost*, 333 S.W.3d 73, 88 (Tenn. 2010) (quoting *Oceanics Sch., Inc. v. Barbour*, 112 S.W.3d 135, 140 (Tenn. Ct. App. 2003) (*Oceanics II*)). Here, as the party seeking to pierce the corporate veil, Mr. Hasty had "the burden of presenting facts demonstrating that [he was] entitled to this equitable relief." *Oceanics II*, 112 S.W.3d at 140.

Mr. Hasty contends the trial court erred in denying his motion. He argues that he was not required to add Mr. Queen as a party-defendant because, when he obtained the

¹ The indemnity claim was for attorney's fees and expenses incurred by Mr. Hasty.

default judgment against Greyhawk, he also obtained a judgment against its alter ego, Mr. Queen. *See id.* at 146. Under these circumstances, we disagree.

A trial court has “no authority to issue orders against persons who are not parties to the action.” *Larry E. Parrish, P.C. v. Dodson*, No. M2011-00349-COA-R3-CV, 2011 WL 4529607, at *10 (Tenn. Ct. App. Sept. 29, 2011); *see Henderson v. Mabry*, 838 S.W.2d 537, 541 (Tenn. Ct. App. 1992) (removing injunction against non-parties). Our courts have never pierced the corporate veil to reach the assets of a non-party alter ego. The alleged alter ego has always been either named as a party in the original complaint or added as a party in an amended pleading. *See, e.g., H.G. Hill Realty Co., L.L.C. v. Re/Max Carriage House, Inc.*, 428 S.W.3d 23, 28 (Tenn. Ct. App. 2013) (alter ego added as a party in an amended complaint);² *Pamperin*, 276 S.W.3d at 435 (alter ego named as a party in the original complaint); *Boles v. Nat’l Dev. Co., Inc.*, 175 S.W.3d 226, 232 (Tenn. Ct. App. 2005) (alter ego added as party in amended complaint); *Oceanics II*, 112 S.W.3d at 139 (alter ego sued in separate action).

Mr. Hasty filed his motion after the judgment against the corporation was final. This is the same factual scenario we faced in *Oceanics Schools, Inc. v. Operation Sea Cruise, Inc.*, No. 03A01-9904-CV-00153, 1999 WL 1059678 (Tenn. Ct. App. Nov. 19, 1999) (*Oceanics I*). There, the trial court denied the creditor’s request, and this Court affirmed. *Id.* at *3-4. We agreed that the judgment creditor could only seek to pierce the corporate veil at that juncture in a separate action against the individual shareholder. *Id.* at *4. The same reasoning applies here.

Like the alleged alter ego in *Oceanics I*, Mr. Queen was not named in the judgment. *See id.* at *2. Tennessee courts authorize execution of judgments against defendants. *Id.* at *3; *see* Tenn. Code Ann. § 26-1-104 (2017). Our courts do not enforce judgments against the assets of “de facto defendant[s]” who are not before the court as a party. *Oceanics I*, 1999 WL 1059678, at *3; *see Boyd v. Baynham*, 24 Tenn. 386, 386 (1844) (explaining that the judgment was not binding on a non-party). And, because the judgment was final, it was too late to amend the pleadings to add Mr. Queen as a party to the third-party complaint. *See Oceanics I*, 1999 WL 1059678, at *4. As we have explained before, the original third-party complaint was converted into a final judgment. *Id.*; *Williams v. Sugar Cove Ltd. P’ship*, 955 S.W.2d 75, 77 (Tenn. Ct. App. 1997). So there was nothing to amend. *Oceanics I*, 1999 WL 1059678 at *4; *Williams*, 955 S.W.2d at 77.

Our opinion in *Oceanics II* does not change this result. In *Oceanics II*, the judgment creditor filed a separate action against Clifford Barbour, the alleged alter ego of the

² Mr. Hasty notes that we upheld a default judgment against an alter ego who was not served with formal process in *H.G. Hill Realty Co., L.L.C. v. Re/Max Carriage House, Inc.* *See* 428 S.W.3d at 36. Although the alter ego was named as a party-defendant, he was never properly served with process. *Id.* at 28, 35. The alter ego in that case waived the defense of insufficient service of process. *Id.* at 35 n.3. Mr. Queen has not.

corporate entity, seeking to pierce the corporate veil. 112 S.W.3d at 139. The trial court found that Mr. Barbour was the corporation's alter ego. *Id.* And it was appropriate under the circumstances to disregard the corporate entity and enforce the judgment against the alter ego. *Id.* We affirmed the trial court's finding that Mr. Barbour was the corporation's alter ego. *Oceanics II*, 112 S.W.3d at 141-42. And we rejected the alter ego's "multi-faceted attempt" to avoid enforcement of the judgment. *Id.* at 146.

Among other things, the alter ego questioned whether the separate action could be viewed as an action on the original judgment. *Id.* at 142; *see* Tenn. Code Ann. § 28-3-110(a)(2) (Supp. 2022). Because piercing the corporate veil is an equitable doctrine, we adopted a flexible approach to the statute of limitations issue. *See Oceanics II*, 112 S.W.3d at 143-45. We rejected the alter ego's argument that the veil-piercing claim was "a separate and independent cause of action" subject to a shorter limitations period. *Id.* at 145 (quoting *Matthews Const. Co. v. Rosen*, 796 S.W.2d 692, 693 n.1 (Tex. 1990)). The claim focused solely "on the domesticated judgment, not on the cause or causes of action underlying the original suit." *Id.* So we deemed it "inescapable" that the claim was "controlled by the ten-year statute of limitations addressing actions on judgments." *Id.* at 145-46; *see Benz-Elliott v. Barrett Enters., LP*, 456 S.W.3d 140, 149 (Tenn. 2015) (instructing courts to ascertain the gravamen of the claims when choosing the applicable statute of limitations). And "[o]nce the trial court determined that [Clifford] Barbour [wa]s the alter ego of [the corporation], the judgment against the corporation [wa]s properly construed as a judgment against Barbour as well." *Oceanics II*, 112 S.W.3d at 146.

But we did not dispense with the fundamental requirement that an alleged alter ego be named as a party. The alter ego in *Oceanics II* was a party-defendant in the separate action. *Id.* at 139. And he had an opportunity "to defend[] the . . . allegation that he was the alter ego." *Id.* Under our analysis in *Oceanics II*, the original judgment may be enforced against an alter ego of the corporation provided that the alter ego is a party to the veil-piercing action. *See Boles*, 175 S.W.3d at 251 & n.4.

Mr. Hasty's reliance on two recent veil-piercing decisions to argue otherwise is misplaced. *See Cook's Roofing, Inc. v. Hartford Underwriters Ins. Co.*, No. W2019-00271-COA-R3-CV, 2020 WL 4151216, at *18-20 (Tenn. Ct. App. July 20, 2020); *Larry E. Parrish, P.C. v. Strong*, No. M2017-02451-COA-R3-CV, 2018 WL 6843402, at *11-13 (Tenn. Ct. App. Dec. 28, 2018). In both cases, the judgment creditor filed a motion seeking to pierce the corporate veil before the judgment was final. *Cook's Roofing, Inc.*, 2020 WL 4151216, at *8; *Larry E. Parrish, P.C.*, 2018 WL 6843402, at *11. "[B]ecause the proceedings [we]re still ongoing," we concluded that the trial court could allow the creditor to amend the pleadings "to add the alleged alter egos" and hold a "separate evidentiary hearing to determine whether to pierce the corporate veil." *Cook's Roofing, Inc.*, 2020 WL 4151216, at *20; *Larry E. Parrish, P.C.*, 2018 WL 6843402, at *13. As Mr. Hasty concedes, it was too late to add Mr. Queen as a third-party defendant.

III.

The trial court properly denied the motion to pierce the corporate veil. The default judgment against Greyhawk was final. The court lacked authority to enforce the judgment against a non-party. And it was too late to amend the pleadings to add a new party.

s/ W. Neal McBrayer
W. NEAL McBRAYER, JUDGE