

STATE OF MICHIGAN
COURT OF APPEALS

ZLATE ONCEVSKI,

Plaintiff-Appellant,

v

STEALTH COMPOSITES, L.L.C., EMERSON
PROPERTIES CORPORATION, EXPOSURE
PLUS, INC., KAREN NEAR, ROBERT NEAR,
PURSHOTTAM DEO, JAMES JOHNSON, and
PHYLLIS JOHNSON,

Defendants,

and

DARYL GOTTSCHALK,

Defendant-Appellee.

UNPUBLISHED

January 12, 2006

No. 255317

Oakland Circuit Court

LC No. 2002-043186-CB

Before: Murray, PJ. and Jansen and Kelly, JJ.

PER CURIAM.

Following a bench trial, the trial court entered a judgment in favor of Daryl Gottschalk. Plaintiff alleged that Gottschalk committed fraud by inducing plaintiff to loan \$100,000 to Stealth Composites, L.L.C. Plaintiff appeals as of right, arguing that the trial court erred in ruling that defendant, as an officer of Exposure Plus, Inc., was protected by the corporate shield doctrine. Plaintiff contends that defendant can be held personally liable for fraud and the trial court's findings of fact support a judgment in plaintiff's favor on the fraud claim. We reverse and remand.

Plaintiff does not challenge the trial court's findings of fact, but rather its conclusions of law applied to those findings. A trial court's conclusions of law are reviewed de novo. *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003).

The trial court found that defendant's conduct was misleading and that plaintiff relied on defendant's representations in loaning \$100,000 to Stealth Composites. But the trial court ruled that it was not necessary to determine whether defendant's misleading behavior amounted to fraud because it first had to address whether Exposure Plus, Inc.'s corporate veil could be

pierced to reach defendant. Although the trial court correctly observed that plaintiff alleged a claim for piercing the corporate veil in his complaint, plaintiff also alleged an independent claim for common-law fraud against defendant individually.

Michigan has long held that corporate employees are personally liable for their torts. In *Warren Tool Co v Stephenson*, 11 Mich App 274, 300; 161 NW2d 133 (1968), this Court stated: “It is a familiar principle that the agents and officers of a corporation are liable for torts which they personally commit, even though in doing so they act for the corporation, and even though the corporation is also liable for the tort.” Further, corporate officers are not excused from personal liability for their torts simply because they realize no personal profit from their acts. *Id.* at 300-301; see also *Citizens Ins Co of America v Delcamp Truck Center, Inc*, 178 Mich App 570, 576; 444 NW2d 210 (1989).

In *Attorney General v Ankersen*, 148 Mich App 524; 385 NW2d 658 (1986), the plaintiffs sought abatement of a nuisance caused by improper storage of hazardous industrial waste that resulted in a fire hazard. One of the defendants, B. Richard Ankersen, established and incorporated Ankersen Resource Systems, Inc (ARS). *Id.* at 534. ARS entered into an agreement with the other defendants to operate a waste disposal business, which was the subject of the nuisance. *Id.* In addressing the issue of B. Richard Ankersen’s personal liability for the nuisance, this Court stated:

The trial court concluded that Ankersen was not personally liable, but it is not clear whether that determination was based upon a finding that Ankersen had not acted negligently or on a finding that plaintiffs had not “pierced the corporate veil” of ARS.

We note that this is not a question of piercing the corporate veil. It is beyond question that a corporate employee or official is personally liable for all tortious or criminal acts in which he participates, regardless of whether he was acting on his own behalf or on behalf of the corporation. [*Id.* at 557.]

See also *Joy Management Co v Detroit*, 183 Mich App 334, 340; 455 NW2d 55 (1990).

Accordingly, defendant could be held personally liable for fraud under the circumstances of this case and the trial court erred in ruling that plaintiff was required to pierce the corporate veil of Exposure Plus, Inc. to reach defendant.

Plaintiff further argues that the trial court’s findings of fact establish that defendant committed fraud. We agree. To prevail in his fraud claim, plaintiff had to prove:

(1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, the defendant knew that it was false, or made it recklessly, without knowledge of its truth as a positive assertion; (4) the defendant made the representation with the intention that the plaintiff would act upon it; (5) the plaintiff acted in reliance upon it; and (6) the plaintiff suffered damage. [*Bergen v Baker*, 264 Mich App 376, 382; 691 NW2d 770 (2004) (internal quotations and citations omitted).]

In its opinion, the trial court acknowledged the basis for plaintiff's fraud claim and found that (1) defendant represented to plaintiff that Exposure Plus, Inc. had a contract, totaling \$11 million, with Bill Jordan Enterprises; (2) defendant met with plaintiff several times regarding investing money in Stealth Composites in order to fulfill the contract; (3) defendant never clarified that the alleged contract with Bill Jordan Enterprises was a licensing agreement as opposed to a sales contract; indeed, defendant admitted that Exposure Plus, Inc. never had a contract with Bill Jordan Enterprises; (4) plaintiff ultimately discovered that Exposure Plus, Inc. never had any type of commitment from Bill Jordan Enterprises; (5) defendant's behavior was misleading; (6) plaintiff relied on defendant's behavior in loaning \$100,000 to Stealth Composites; (7) the majority of plaintiff's loan was not used for its intended purpose; and (8) plaintiff was never paid for Exposure Plus, Inc.'s use of the dipping tank that was purchased with plaintiff's money. These findings support a conclusion that defendant committed fraud.

We reverse the trial court's judgment in defendant's favor and remand for entry of a judgment in plaintiff's favor and for further proceedings on the issue of plaintiff's damages. We do not retain jurisdiction.

/s/ Christopher M. Murray
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly