

STATE OF MICHIGAN
COURT OF APPEALS

GEORGE KOSTOPOULOS,

Plaintiff-Appellant,

V

DEVON R. CRIMMINS,

Defendant-Appellee.

UNPUBLISHED

December 29, 2011

No. 299478

Oakland Circuit Court

LC No. 2010-107311-CZ

Before: SAAD, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Plaintiff appeals as of right an order entered by the circuit court granting defendant's motion for summary disposition and dismissing plaintiff's case seeking to pierce D.R. Crimmins Construction, Inc.'s corporate veil. The instant action involves a complaint filed by plaintiff alleging that defendant is D.R. Crimmins Construction, Inc.'s alter ego, and is therefore personally liable for a consent judgment entered in a prior lawsuit against D.R. Crimmins Construction, Inc., a corporation solely owned by defendant. We affirm.

In an earlier 2005 action, Captivating Homes, L.L.C. filed a suit against plaintiff, defendant, D.R. Crimmins Construction, Inc., and several other parties unrelated to the instant case for claims arising out of the construction of plaintiff's home. Plaintiff filed a cross-claim against defendant and D.R. Crimmins Construction, Inc. Plaintiff alleged several claims against defendant and D.R. Crimmins Construction, Inc. including breach of contract, fraudulent misrepresentation, violation of the Builders Trust Fund Act, violation of the Michigan Consumer Protection Act, and slander of title/discharge of construction lien. He also sought both compensatory and exemplary damages.

On March 26, 2006, the circuit court entered a consent order of dismissal. The circuit court also entered a consent judgment. The consent judgment stated the following:

IT IS HEREBY ORDERED that a Judgment in the amount of \$125,000.00 is entered in favor of Cross-Plaintiffs George and Kathryn Kostopoulos and against Cross-Defendant D.R. Crimmins Construction Company, Inc.

In December 2009, pursuant to a court order and subpoena, defendant, on behalf of D.R. Crimmins Construction, Inc., appeared and testified at a creditor's examination. The examination revealed that D.R. Crimmins Constructions, Inc. had no valid builder's license,

failed to follow corporate formalities, and had no inventory or equipment relating to its construction business. Defendant also testified that D.R. Crimmins Constructions, Inc. was insolvent at the time the circuit court entered the consent judgment. As of December 2009, D.R. Crimmins Construction, Inc. had not paid any portion of the consent judgment.

Plaintiff then filed the instant action against defendant in an effort to collect on the consent judgment entered against D.R. Crimmins Construction, Inc. The complaint contains one count which plaintiff characterized as “Piercing the Corporate Veil.” The complaint alleged that the corporation never possessed a builder’s license but rather operated under defendant’s license. It also alleged that the corporation was never formally capitalized and that it failed to follow corporate formalities. Plaintiff also alleged that “defendant used [D.R. Crimmins Construction, Inc.] as a sham corporation . . . for the purpose of defrauding [plaintiff].” The relief requested was “a judgment in [plaintiff’s] favor and against [d]efendant, Devon R. Crimmins, piercing the corporate veil of D.R. Crimmins Construction, Inc. to hold Devon R. Crimmins personally liable for the [consent] judgment.” Defendant filed an answer and affirmative defenses and alleged plaintiff’s claim was barred by res judicata.

Subsequently, plaintiff filed a motion for summary disposition contending that D.R. Crimmins Construction, Inc. was a sham corporation and nothing more than defendant’s alter ego. Plaintiff argued that his alter ego claim seeking to pierce the corporate veil was not barred by the doctrine of res judicata. In his brief in support of his motion, plaintiff acknowledged that Michigan has never addressed whether a judgment creditor is entitled to file a new action seeking to pierce the corporate veil of a judgment debtor in order to hold individual shareholders liable for a judgment against the corporation. Nevertheless, plaintiff urged the circuit court to consider Illinois law and allow his claim to stand.

Defendant filed a response to plaintiff’s motion for summary disposition and requested that the circuit court enter summary disposition in his favor under MCR 2.116(I)(2). Defendant argued that plaintiff’s claim to pierce the corporate veil was barred by the doctrine of res judicata. Defendant contended that plaintiff sought to enforce the consent judgment based on the same facts and alleged injury which gave rise to the consent judgment in the 2005 action. Defendant further argued that plaintiff should have pursued this remedy in the 2005 action, and thus, plaintiff is now barred from pursuing the remedy in this second action. Defendant also argued that plaintiff’s cause of action should be dismissed because he cannot maintain a separate cause of action for fraudulent inducement of a settlement.

The circuit court entered an opinion and order granting summary disposition to defendant and dismissing plaintiff’s motion for summary disposition. The circuit court concluded that res judicata applied and dismissed plaintiff’s alter ego claim seeking to pierce D.R. Crimmins Construction, Inc.’s corporate veil. The circuit court agreed with defendant that plaintiff should have invoked the doctrine and sought to impose liability on defendant in the first action. Plaintiff appeals as of right.

On appeal, plaintiff argues that the circuit court erred in denying his motion for summary disposition. We note that the circuit court did not state which sub rule rendered summary disposition appropriate. The circuit court’s decision was based on its conclusion that res judicata

barred plaintiff's claim, and therefore, it is apparent that summary disposition was granted pursuant to MCR 2.116(C)(7).

Summary disposition is proper under MCR 2.116(C)(7) if “[t]he claim is barred because of . . . prior judgment” MCR 2.116(C)(7). In reviewing such a motion, the substance of the complaint is accepted as true, unless contradicted by evidence submitted by the parties. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). If the pleadings or other evidence show that there is no genuine issue of material fact, a court may decide whether a claim is barred pursuant to MCR 2.116(C)(7) as a matter of law. *Holmes v Mich Capital Med Ctr*, 242 Mich App 703, 706; 620 NW2d 319 (2000). A circuit court’s decision regarding a motion for summary disposition under MCR 2.116(C)(7) is reviewed de novo. *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 417; 733 NW2d 755 (2007). Furthermore, whether res judicata bars a claim is a question of law that this Court reviews de novo. *Estes v Titus*, 481 Mich 573, 578–579; 751 NW2d 493 (2008).

We conclude that the circuit court reached the right result, albeit for the wrong reason. Piercing the corporate veil is an equitable doctrine that may fasten liability in a derivative manner to a nondebtor. See *RDM Holdings, LTD v Continental Plastics Co*, 281 Mich App 678, 709; 762 NW2d 529 (2008). Plaintiff’s complaint alleges a cause of action solely seeking to fasten liability on defendant for a prior judgment entered against D.R. Crimmins Construction, Inc. While no binding authority exists explicitly stating that piercing the corporate veil is not, by itself, a cause of action, such a cause of action has never been recognized in Michigan.¹ We cannot find support for the proposition that piercing the corporate veil solely on an alter ego theory is in and of itself a cause of action. To the contrary, this Court has issued numerous unpublished opinions holding that a cause of action seeking to pierce the corporate veil, by itself, is not a cause of action recognized in Michigan. See *Arevalo v Arevalo*, unpublished per curiam opinion of the Court of Appeals, issued April 6, 2010 (Docket Nos. 285548, 286742) (holding that an alter ego claim is not, by itself, a cause of action, but rather, a doctrine that allows a court to disregard the corporate entity, i.e., to pierce the corporate veil); *Quick-Sav Food Stores, Ltd v Estate of Mattis*, unpublished per curiam opinion of the Court of Appeals, issued January 19, 2010 (Docket No. 285414) (“an alter ego or piercing the corporate veil theory of liability is an equitable doctrine applied in a derivative manner to target a nondebtor”); *DeWitt v Sealtex Co, Inc*, unpublished per curiam opinion of the Court of Appeals, issued June 5, 2008 (Docket Nos. 273387, 273390, 274255, 275931) (“A claim based on the alter ego theory is not in itself a claim for substantive relief, but rather is procedural. A finding of fact of alter ego, standing alone, creates no cause of action. It merely furnishes a means for a complainant to reach a second corporation or individual upon a cause of action that otherwise would have existed only against the first corporation.”). The Sixth Circuit has also concluded that, in Michigan, an action to pierce the corporate veil is not a separate cause of action. *In re RCS Engineered Products Co*, 102 F3d 223, 226 (6th Cir 1996). The United States District Court for the Eastern District of

¹ Plaintiff failed to direct this Court to any cases that allow a piercing the corporate veil under the present circumstances and our own independent research has likewise failed to uncover cases directly on point.

Michigan has also opined that, under Michigan law, a claim seeking to pierce the corporate veil is not a cause of action, but rather, “a determination of whether multiple entities exist as separate entities or as mere alter egos of each other.” *Aioi Seiki, Inc, v JIT Automation, Inc*, 11 F Supp 2d 950, 953-954 (ED Mich, 1998).² We conclude that piercing the corporate veil is not itself an independent cause of action, but rather, it is means of imposing liability on an underlying cause of action. Having concluded that plaintiff’s piercing the corporate veil claim is not, by itself, a cause of action, the doctrine of res judicata cannot apply. As we indicated above, res judicata bars a subsequent cause of action between the same parties when the facts or evidence essential to the action are identical to those essential to a prior action. *Sewell*, 463 Mich at 575. In the instant case, res judicata is inapplicable because piercing the corporate veil is not a “subsequent cause of action.” *Id.*

Nonetheless, under MCR 2.116(C)(8), summary disposition is appropriate when the opposing party has failed to state a claim upon which relief can be granted. Here, no error occurred where the circuit court granted summary disposition because plaintiff’s complaint failed to allege a cause of action recognized in Michigan. See e.g. *Teel v Meredith*, 284 Mich App 660, 663; 774 NW2d 527 (2009)

Plaintiff’s complaint contained one count, which plaintiff characterizes as “Piercing the Corporate Veil.” The complaint did not allege any unlawful conduct by defendant or D.R. Crimmins Construction, Inc. subsequent to the prior lawsuit and the consent judgment. Instead, the complaint alleged that the corporate formalities were not followed by D.R. Crimmins Construction, Inc. and that defendant was D.R. Crimmins Construction’s alter ego. The relief requested was “a judgment in [plaintiff’s] favor and against [defendant] piercing the corporate veil of D.R. Crimmins Construction, Inc. to hold [defendant] personally liable for the [consent] judgment.” Accordingly, plaintiff failed to state a cause of action upon which relief could be granted. See MCR 2.116(C)(8). The circuit court did not err in granting defendant’s motion for summary disposition because plaintiff failed to state a cause of action in his complaint.³

Affirmed.

/s/ Henry William Saad
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause

² We note that plaintiff himself acknowledges that no such cause of action has been recognized in Michigan.

³ Because this issue is dispositive, we need not address defendant’s remaining claims of error.