

STATE OF MICHIGAN  
COURT OF APPEALS

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CATHY LOWE, Personal Representative of the  
Estate of JUSTIN P. LOWE,

Plaintiff-Appellant,

v

MANTHEI DEVELOPMENT CORPORATION,

Defendant-Appellee,

and

MDC CONTRACTING, LLC,

Defendant.

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UNPUBLISHED  
April 19, 2007

No. 273094  
Charlevoix Circuit Court  
LC No. 05-079620-NI

Before: Donofrio, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Plaintiff appeals by right the dismissal of her wrongful death claim against defendant Manthei Development Corporation (Manthei). Plaintiff argues that the trial court erred by not finding a material question of fact remained whether Manthei knew or authorized MDC Contracting, L.L.C. (MDC), to modify a portable rock crusher that caused the death of plaintiff's decedent. We affirm.

MDC employed plaintiff's decedent, who was killed on May 27, 2004. A conveyor struck him in the chest after it was released from the portable rock crusher's fixed fastening base. MDC leased the rock crusher from Manthei on January 1, 2003, when it assumed Manthei's mining operations, and former Manthei employees became MDC employees. Harold Veldkamp, one of the former Manthei employees who transferred to MDC, modified the rock crusher in the spring of 2003. Plaintiff claims this modification caused decedent's death, and that the lease did not authorize the modification because it was not intended to keep the leased equipment in "good working order." Plaintiff argues that because Manthei did not plead as an affirmative defense that the modification was unauthorized, Mark Manthei, the president of both Manthei and MDC, must have authorized the modification.

We review de novo a trial court's grant or denial of summary disposition under MCR 2.116(C)(10), which tests the factual sufficiency of plaintiff's claim. *Spiek v Dep't of*

*Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The moving party must specifically identify the undisputed factual issues, MCR 2.116(G)(4), *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999), and has the initial burden of supporting its position with documentary evidence, MCR 2.116(G)(3)(b), *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). The trial court must consider the submitted documentary evidence in the light most favorable to the nonmoving party. MCR 2.116(G)(5); *Maiden, supra* at 120. If the moving party fulfills its initial burden, the party opposing the motion then must demonstrate with evidentiary materials that a material issue of disputed fact exists, or the motion is properly granted. *Id.*; MCR 2.116(G)(4).

We conclude that the trial court properly granted summary disposition to Manthei. Plaintiff points to no evidence that Manthei had knowledge of, or authorized the modification to the crusher. We find plaintiff's argument regarding the lease agreement is without merit. Whether the modification was allowed under the lease or constituted a breach of lease is immaterial to whether Manthei authorized or knew of the modification. Likewise, the fact that the same individuals may have owned Manthei and MDC or that Mark Manthei served as president of both companies does not establish that the corporate entity, Manthei, authorized or had prior knowledge of the modification. See, e.g., *Ross v Auto Club Group*, 269 Mich App 356, 361; 711 NW2d 787 (2006) (the long-held rule is that the corporate entity is distinct even if all its stock is owned by a single individual or corporation), and *Rymal v Baergen*, 262 Mich App 274, 293; 686 NW2d 241 (2004) ("The law treats a corporation as an entirely separate entity from its shareholders, even where one individual owns all the corporation's stock.").

Plaintiff's argument regarding the lease is without merit because it is based on speculation. Speculation is insufficient to create a material question of fact. When faced with a motion for summary disposition under MCR 2.116(C)(10), the nonmoving party must "set forth specific facts showing that a genuine issue of material fact exists and cannot simply rest on mere conjecture and speculation to meet the burden of providing evidentiary proof establishing a genuine issue of material fact." *Altairi v Alhaj*, 235 Mich App 626, 628-629; 599 NW2d 537 (1999). Although circumstantial evidence may be sufficient to establish a claim, "parties opposing a motion for summary disposition must present more than conjecture and speculation to meet their burden of providing evidentiary proof establishing a genuine issue of material fact." *Libralter Plastics, Inc v Chubb Group of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993). Accepting plaintiff's argument that the modification would otherwise be a breach of the lease without Manthei's authorization does not create a fact question that Manthei did so. Without considering other evidence, a breach of the lease is as equally likely as it is that Manthei authorized the modification. Plaintiff's speculation cannot create a material question of fact in the face of the undisputed testimony that Manthei did not know of or authorize the modification.

We also find meritless plaintiff's argument that defendants abused the corporate form. "It is a well-recognized principle that separate corporate entities will be respected." *Seasword v Hilti, Inc (After Remand)*, 449 Mich 542, 547; 537 NW2d 221 (1995). Further, "absent some abuse of corporate form, parent and subsidiary corporations are separate and distinct entities." *Id.* Plaintiff cites no authority for her suggestion that common ownership of Manthei and MDC constitutes an abuse of the corporate form. A party abandons an issue when it fails to cite any supporting legal authority for its position. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). Although we recognize that a trial court acting in equity has the power to

pierce the corporate veil, it is appropriate to do so only when there is evidence of fraud, illegality, or injustice. See *Dep't of Consumer & Industry Services v Shah*, 236 Mich App 381, 393; 600 NW2d 406 (1999). “For the corporate veil to be pierced . . . the corporate entity must have been used to commit a wrong or fraud.” *Rymal, supra* at 293 (citation omitted). Here, plaintiff produced no evidence the corporate form of MDC and Manthei was used to commit fraud, illegality, or other wrong. Consequently, plaintiff produced no evidence Manthei or its owners abused the corporate form. This argument fails.

Because plaintiff produced no evidence from which it could be inferred that Manthei actually authorized or required the modification at issue, the trial court properly concluded based on the undisputed facts that Manthei was entitled to judgment as a matter of law. MCR 2.116(C)(10); *Maiden, supra* at 120.

We affirm.

/s/ Pat M. Donofrio  
/s/ E. Thomas Fitzgerald  
/s/ Jane E. Markey