COURT OF APPEALS
DECISION
DATED AND FILED

June 8, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-0441-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

R&L TRANSFER, INC.,

PLAINTIFF-RESPONDENT,

V.

CHARLES BICKFORD AND CLEVA BICKFORD, INDIVIDUALLY AND D/B/A BICKFORD RENTAL AND BICKFORD RENTAL, INC.,

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Juneau County: JOHN W. BRADY, Judge. *Reversed.*

¶1 DYKMAN, P.J.[1] Charles and Cleva Bickford appeal from a small claims judgment in favor of R&L Transfer, Inc. Bickford, Inc. breached a bill of

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (1997-98), and expedited under WIS. STAT. RULE 809.17 (1997-98).

lading contract with R&L for business equipment. Bickford, Inc.'s check for the delivery charge also had Charles and Cleva Bickford's names at the top. The trial court concluded that R&L had been misled, and equity demanded the piercing of Bickford, Inc.'s corporate veil, thereby imposing liability on the Bickfords for the debt. The Bickfords argue that the corporation is a separate entity, and that they should be shielded from liability for the corporation's breach. Because there is insufficient evidence to support the trial court's conclusion, we reverse.

BACKGROUND

¶2 Bickford, Inc. was a recycling and scrapping business in which Charles Bickford was the majority shareholder. During part of its existence, Charles Bickford's son managed the business. In December 1998, Bickford, Inc. entered into a three-party bill of lading contract in which R&L Transfer, Inc. was to deliver C.O.D. goods supplied by Triple S Dynamics, Inc. On December 22, 1998, R&L delivered the goods to Bickford, Inc., but the driver for R&L presented a bill for the delivery charge only. The bill was paid by an employee of Bickford, Inc. using a check previously signed by Charles Bickford. Due to a bank error, the check had "Bickford, Inc.," "Charles Bickford," "Cleva Bickford," and "Bickford Rental" printed on the top. Bickford, Inc. went out of business on December 31, 1998. In January, R&L discovered its mistake and sent a driver to recover the contract price still owed by Bickford, Inc. Unable to recover from the defunct business, R&L sued the Bickfords in small claims court for breach of contract. The trial court granted judgment in favor of R&L and the Bickfords appeal.

ANALYSIS

¶3 Piercing the corporate veil is an equitable remedy; we review decisions that do so for an erroneous exercise of discretion. *See* ***Consumer's Co-***

op of Walworth County v. Olsen, 142 Wis. 2d 465, 472, 419 N.W.2d 211 (1988). The trial court's discretionary determination must be founded in a reasonable basis both factually and legally. *See* ***Hartung v. Hartung***, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981). A discretionary determination will not be sustained if based on an erroneous view of the facts or the law. *See* ***id.***

¶4 Limited liability for corporate shareholders has long been recognized in Wisconsin. *See generally* ***Milwaukee Toy Co. v. Industrial Comm'n of Wis.,*** 203 Wis. 493, 234 N.W. 748 (1931). In general, a corporation is treated as an entity separate from its members. *See* ***Wiebke v. Richardson & Sons, Inc.,*** 83 Wis. 2d 359, 363, 265 N.W.2d 571 (1978). Exceptions to this principle are not to be applied lightly, and limited liability is held to be the rule in most cases. *See* ***Ruppa v. American States Ins. Co.***, 91 Wis. 2d 628, 644-45, 284 N.W.2d 318 (1979). The supreme court in ***Milwaukee Toy*** explained that the corporate veil may be pierced where "applying the corporate fiction would accomplish some fraudulent purpose, operate as a constructive fraud, or defeat some strong equitable claim." ***Milwaukee Toy***, 203 Wis. at 496. The supreme court later refined this definition into an "instrumentality" rule containing three elements:

> (1) Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; and
>
> (2) Such control must have been used by the defendant to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or dishonest and unjust act in contravention of plaintiff's legal rights; and
>
> (3) The aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of.

Consumer's Co-op, 142 Wis. 2d at 484. We conclude that none of the elements exist in this case.

(1) *Complete domination*

¶5 The elements of the instrumentality test are to be examined in a flexible manner to determine whether, in combination with an element of injustice, they show a corporation that has "'no separate mind, will, or existence of its own' and was therefore the 'mere instrumentality or tool' of the shareholder." ***Id.*** at 485-86. (quoting ***Glenn v. Wagner***, 329 S.E.2d 326, 332 (N.C. 1985)). Charles Bickford's majority shareholder status in Bickford, Inc. is not a sufficient showing of control, as the rule expressly states. *See* ***id.*** at 484. Charles Bickford testified that he was not even aware of the order from Triple S Dynamics until R&L's driver came by to collect the remaining contract price in January 1999. He also testified that Cleva Bickford and he never personally agreed to pay R&L. Thus, Bickford, Inc. had an existence of its own separate from that of Charles and Cleva Bickford. There is no other evidence to support the contention that Bickford, Inc. was a "mere instrumentality" of the appellants.

(2) *Perpetration of fraud or wrong*

¶6 There is no evidence showing that whatever control the trial court concluded the appellants had over Bickford, Inc. was used to commit a fraud or wrong, or to perpetuate the violation of a statutory or other positive legal duty. R&L claims to have been misled by the check with the names of Charles and Cleva Bickford alongside the name of Bickford, Inc. However, R&L offers no evidence that this situation constitutes fraud. Mere payment of a shipping charge does not indicate any perpetration of fraud or wrongdoing, regardless of whose

names appear on the check. Moreover, there is no evidence that the delivery driver was in any way influenced by the Bickfords' names appearing on the check.

(3) C*ause of injury*

¶7 Finally, even if R&L had established the first two elements of the instrumentality test, there is no evidence that any allegedly fraudulent conduct by the Bickfords caused R&L's injury. Even if R&L was later misled by the check used to pay the shipping charge, the deception would have occurred after the injury had taken place. There is no evidence that R&L had any reason to believe that the Bickfords and Bickford, Inc. were one and the same at the time it entered into the contract. Until it received the check, R&L was dealing solely with Bickford, Inc. Therefore, the alleged fraudulent conduct did not induce R&L to rely to its detriment, and was not the cause of its injury.

CONCLUSION

¶8 R&L has suffered a loss, and may have a legitimate claim against Bickford, Inc. Unfortunately, with Bickford, Inc. out of business, R&L's options for relief are sorely limited. However, injustice alone does not "constitute adequate grounds to pierce the corporate veil." ***Id.*** at 485. The absence of any one element of the instrumentality test can prevent piercing of the corporate veil. *See* ***id.*** Here, there is no evidence to show that any elements were satisfied, much less all three. Accordingly, the appellants are shielded from liability for Bickford, Inc.'s breach.

By the Court.—Judgment reversed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)(4) (1997-98).