

IN THE UTAH COURT OF APPEALS

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Michael DeGrazio,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Cross-claimant and)	
Appellant,)	Case No. 20040432-CA
)	
v.)	
)	F I L E D
Legal Title Company and J.)	(May 4, 2006)
Spencer Ball,)	
)	<u>2006 UT App 183</u>
Cross-claim Defendants)	
and Appellees.)	

Fourth District, Heber City Department, 000500431
The Honorable Donald J. Eyre Jr.

Attorneys: Budge W. Call, Salt Lake City, for Appellant
 J. Spencer Ball, Salt Lake City, for Appellees

Before Judges Greenwood, Davis, and McHugh.

McHUGH, Judge:

Michael DeGrazio appeals two written rulings in favor of Legal Title Company (Legal Title) and J. Spencer Ball. We affirm.

DeGrazio argues that the trial court erred by concluding that the corporate veil of Legal Title should not be pierced, and therefore, that Ball was not personally liable for the judgment entered against Legal Title. "Ordinarily, a corporation is regarded as a separate and distinct legal entity from its stockholders. This is true whether the corporation has many stockholders or only one. Consequently, the corporate veil which protects stockholders from individual liability will only be pierced reluctantly and cautiously." Colman v. Colman, 743 P.2d 782, 786 (Utah Ct. App. 1987) (quotations and citations omitted).

To aid courts in deciding when to pierce the corporate veil, the Utah Supreme Court established a two-prong test in Norman v. Murray First Thrift & Loan Co., 596 P.2d 1028 (Utah 1979): "[I]n order to disregard the corporate entity, there must be a concurrence of two circumstances: (1) there must be such

unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist, viz., the corporation is, in fact, the alter ego of one or a few individuals; and (2) the observance of the corporate form would sanction a fraud, promote injustice, or an inequitable result would follow."

Schafir v. Harrigan, 879 P.2d 1384, 1389 (Utah Ct. App. 1994) (alteration in original) (quoting Norman, 596 P.2d at 1030).

Certain factors which are deemed significant, although not conclusive, in determining whether this test has been met include: (1) undercapitalization of a one-man corporation; (2) failure to observe corporate formalities; (3) nonpayment of dividends; (4) siphoning of corporate funds by the dominant stockholder; (5) nonfunctioning of other officers or directors; (6) absence of corporate records; (7) the use of the corporation as a facade for operations of the dominant stockholder or stockholders; and (8) the use of the corporate entity in promoting injustice or fraud.

Colman, 743 P.2d at 786 (footnotes omitted).

DeGrazio has not demonstrated the existence of the type of unity of interest and ownership required by Norman. See 596 P.2d at 1030; see also Schafir, 879 P.2d at 1389. Although DeGrazio argues that such unity of interest and ownership is satisfied because Ball was the sole shareholder and owner of Legal Title, this is not enough. See Norman, 596 P.2d at 1030. In addition to demonstrating sole ownership, DeGrazio must also establish "that the separate personalities of the corporation and the individual no longer exist, viz., the corporation is, in fact, the alter ego of one or a few individuals." Id. The first seven of the eight factors set forth in Colman are relevant to the question of whether a corporation is the alter ego of one or a few individuals. See 743 P.2d at 786. DeGrazio has failed to address any of the Colman factors. Accordingly, we conclude that DeGrazio has failed to establish the first of the two circumstances set forth in Norman. See 596 P.2d at 1030 ("[T]here must be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist, viz., the corporation is, in fact, the alter ego of one or a few individuals"). As a result, he cannot demonstrate that the corporate veil of Legal Title should be pierced. See id. Therefore, we affirm the trial court's ruling on this issue.

DeGrazio also asserts that Legal Title's corporate form should be disregarded because Legal Title was out of business in May 2000 when DeGrazio's claims for damages in this case arose. In response, Legal Title and Ball cite to a document in the record indicating that Legal Title's corporate status did not expire until July 2000. DeGrazio replies by arguing that "[t]he fact that a company is not yet involuntarily dissolved is not alone sufficient to recognize a company as a separate and distinct legal entity." However, DeGrazio has not supplied any supporting legal authority for this assertion. See Utah R. App. P. 24(a)(9) (requiring an appellant's argument to include "citations to the authorities, statutes, and parts of the record relied on"); State v. Thomas, 961 P.2d 299, 305 (Utah 1998) (stating that rule 24(a)(9) requires an argument to contain "reasoned analysis based on [legal] authority").

Further, although he has cited to Ball's testimony concerning when Legal Title went "out of business," DeGrazio has not provided any factual or legal authority for ignoring the corporate structure in this case. See, e.g., Utah Code Ann. § 16-10a-1405(1), (2)(e)-(f) (2005) (providing that "[a] dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs" and that "[d]issolution of a corporation does not . . . prevent commencement of a proceeding by or against the corporation in its corporate name" or "abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution" (emphasis added)); Brigham Young Univ. v. Tremco Consultants, Inc., 2005 UT 19, ¶3 n.1, 110 P.3d 678 ("Of course, because '[a] dissolved corporation continues its corporate existence,' [Utah Code Ann.] § 16-10a-1405(1), shareholders cannot be held individually liable for debts the corporation incurred prior to its dissolution. [See id.] § 16-10a-622(2) [(2005)] (noting shareholder insulation from suits against the corporation)." (first alteration in original)); see generally Utah Code Ann. §§ 16-10a-1401 to -1440 (2005) (providing requirements for dissolution of a corporation). Accordingly, we conclude that this argument is inadequately briefed and without merit, and we do not address it further.

Finally, DeGrazio argues that he is entitled to attorney fees under the third-party tort rule because he was forced to defend a foreclosure action filed against him, and that action was the direct and natural consequence of Ball's negligence. See, e.g., Tolman v. Winchester Hills Water Co., 912 P.2d 457, 460 n.2 (Utah Ct. App. 1996) (stating that under the third-party tort rule, "it is settled that when the natural consequence of one's negligence is another's involvement in a dispute with a third party, attorney fees reasonably incurred in resolving the dispute are recoverable from the negligent party as an element of damages" (quotations and citation omitted)). In this case, however, the trial court concluded in its March 23, 2004 ruling

that DeGrazio "failed to . . . show any cause of action for negligence."¹ Instead, the trial court determined that the actions were "contrary to the contractual obligations of Legal Title." Because DeGrazio has not challenged these rulings on appeal, we do not disturb them. See, e.g., Greenwood v. City of N. Salt Lake, 817 P.2d 816, 818 (Utah 1991) (stating that when a party does not appeal an issue, that issue is not before the appellate court); Williamson v. Williamson, 1999 UT App 219, ¶8 n.3, 983 P.2d 1103 (stating that because the appellant "ha[d] not challenged [the trial court's] determination, we [would] not disturb the trial court's ruling on [that] issue"). DeGrazio seeks attorney fees only under the third-party tort rule. Because the trial court rejected DeGrazio's negligence claim, he cannot recover attorney fees under that rule. See Tolman, 912 P.2d at 460 n.2 (stating that under the third-party tort rule, attorney fees are "recoverable from the negligent party" (emphasis added)).

Affirmed.

Carolyn B. McHugh, Judge

WE CONCUR:

Pamela T. Greenwood,
Associate Presiding Judge

James Z. Davis, Judge

¹DeGrazio asserts that "the trial court found that Mr. Ball was negligent." In the portion of the trial court's October 15, 2003 ruling DeGrazio cites, the trial court was merely restating his argument: "In this case, [DeGrazio] urge[s] the [c]ourt to pierce the corporate veil and hold Mr. Ball personally liable because Mr. Ball supervised or personally committed the negligent acts." The trial court then conducted the relevant analysis and concluded that DeGrazio failed to demonstrate that the corporate veil of Legal Title should be pierced. Moreover, in its March 23, 2004 ruling, the trial court specifically concluded that DeGrazio "failed to . . . show any cause of action for negligence."