

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 1850

WAYNE STABLIER CATERING, INC.

VERSUS

L'EAGLE PRODUCTIONS, INC. AND JOSEPH D. MURPHY

Judgment Rendered:

JUN 15 2007

Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Suit Number 515,649

Honorable Timothy Kelley, Presiding

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Joseph D. Murphy

BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

Handwritten signatures:
JMS
DME
RHP by JMS

GUIDRY, J.

In this action to recover payment for services rendered, plaintiff, Wayne Stabler Catering, Inc. (Stabler Catering), appeals the trial court's granting of a summary judgment in favor of defendant, Joseph D. Murphy (Murphy), and dismissing its suit against him with prejudice. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

On January 22, 2002, Stabler Catering and Murphy, on behalf of L'Eagle Productions, Inc. (L'Eagle), entered into a contract for Stabler Catering to provide catering services for a Super Bowl party on February 2, 2002, at Tipitina's in New Orleans. On the date of the event, L'Eagle issued a check, signed by Murphy, to Stabler Catering for \$66,850.00, representing the balance due under the contract and reimbursement to Stabler Catering for money advanced to L'Eagle. However, payment on the check was refused by L'Eagle's bank, which returned the check marked "NSF."

Thereafter, Stabler Catering filed suit against L'Eagle and Murphy seeking payment on the NSF check, plus attorney fees and damages under La. R.S. 9:2782. Particularly, Stabler Catering asserted Murphy was personally liable under the contract because his actions in issuing the \$66,850.00 check constituted fraud, justifying piercing of the corporate veil.¹ On October 26, 2005, Murphy filed a motion for summary judgment asserting that Stabler Catering could not prove Murphy's personal liability under the contract. Following a hearing on January 9, 2006, the trial court signed a judgment granting Murphy's request and dismissing

¹ Stabler Catering also asserted that piercing the corporate veil was warranted because Murphy issued the check in violation of La. R.S. 14:71, he utilized L'Eagle as his alter ego, and he fraudulently induced Stabler Catering to advance \$13,722.50 to L'Eagle on the date of the event. Additionally, Stabler Catering asserted a claim for unfair trade practices in accordance with La. R.S. 51:1401, et seq.

Stabler Catering's action against him with prejudice. Stabler Catering now appeals from this judgment.

DISCUSSION

An appellate court reviews a trial court's decision to grant a motion for summary judgment *de novo*, using the same criteria that govern the trial court's consideration of whether summary judgment is appropriate. Walston v. Lakeview Regional Medical Center, 99-1920, p. 3 (La. App. 1st Cir. 9/22/00), 768 So. 2d 238, 240, writ denied, 00-2936 (La. 12/15/00), 777 So. 2d 1229. The motion should be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. La. C.C.P. art. 966(B); Independent Fire Insurance Company v. Sunbeam Corporation, 99-2181, 99-2257, p. 7 (La. 2/29/00), 755 So. 2d 226, 230-231.

On a motion for summary judgment, if the moving party will not bear the burden of proof at trial on the matter before the court on the motion, the moving party must point out to the court that there is an absence of factual support for one or more elements essential to the adverse party's claim, action, or defense. If the adverse party then fails to produce factual support sufficient to establish that he will be able to satisfy his evidentiary burden of proof at trial, there is no genuine issue of material fact and summary judgment must be granted. La. C.C.P. art. 966(C)(2); Boland v. West Feliciana Parish Police Jury, 03-1297, p. 4 (La. App. 1st Cir. 6/25/04), 878 So. 2d 808, 813, writ denied, 04-2286 (La. 11/24/04), 888 So. 2d 231.

According to the record,² Murphy relied on deposition testimony to assert that Stabiler Catering could not establish his personal liability for the \$66,850.00. Particularly, Murphy alleged that there were no facts to support Stabiler Catering's claims asserting personal liability under La. R.S. 12:91(A), nor for its claims relating to piercing of the corporate veil, unfair trade practices, and damages under La. R.S. 9:2782. The record does not contain any opposition from Stabiler Catering; however, counsel for Stabiler Catering refers to such opposition and its attachments at the hearing on the motion for summary judgment. Because Stabiler Catering designated the record on appeal, any deficiency of the record is imputable to it. However, based on Stabiler Catering's argument on appeal, we find this deficiency is immaterial to our review.

On appeal, Stabiler Catering only argues that the trial court erred in granting summary judgment in favor of Murphy because Murphy's actions clearly were grossly negligent under La. R.S. 12:91(A), which provides, in pertinent part:

Officers and shareholders shall be deemed to stand in a fiduciary relation to the corporation and its shareholders, and shall discharge the duties of their respective positions in good faith, and with that diligence, care, judgment, and skill which ordinary prudent men would exercise under similar circumstances in like positions; however, a director or officer shall not be held personally liable *to the corporation or the shareholders* thereof for monetary damages unless the director or officer acted in a grossly negligent manner as defined in Subsection B of this Section, or engaged in conduct which demonstrates a greater disregard of the duty of care than gross negligence, including but not limited to intentional tortious conduct or intentional breach of his duty of loyalty. [Emphasis added.]

According to the plain language of this statute, officers and directors can only incur personal liability *to the corporation and shareholders thereof* for grossly negligent actions. Therefore, under La. R.S. 12:91(A), Murphy, as an officer of L'Eagle, could only be liable to L'Eagle or to its shareholders. There are no facts to suggest that Stabiler Catering is a shareholder of L'Eagle. Accordingly,

² At the hearing on the motion for summary judgment, the trial court referred to exhibits A through C, which were introduced by Murphy. However, the only exhibit contained in the record on appeal is the deposition of Murphy.

La. R.S. 12:91(A) cannot serve as a basis for imposing personal liability against Murphy in favor of Stabiler Catering.

Additionally, Stabiler Catering admits on the final page of its appellate brief that no evidence has been put forth regarding the corporate status of L'Eagle and whether the corporate veil should be pierced. As stated earlier, Murphy pointed out in its motion for summary judgment that Stabiler Catering had made no showing that Murphy committed any of the acts recognized as justifying a piercing of the corporate veil. At that point, the burden shifted to Stabiler Catering to establish that it could meet its evidentiary burden of proof at trial. Having admittedly failed to do so, we find that the trial court was correct in granting summary judgment in favor of Murphy.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court. All costs of this appeal are to be borne by the appellant, Wayne Stabiler Catering, Inc.

AFFIRMED.