STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

ASSIST 1 MEDICAL STAFFING, LLC.,

Plaintiff,

-vs-

RANDALL RESIDENCE, LLC, a Michigan limited liability company; RANDALL RESIDENCE OF AUBURN HILLS, LLC, a Michigan limited liability company; RANDALL RESIDENCE OF STERLING HEIGHTS, LLC, a Michigan limited liability company, and CHRISTOPHER C. RANDALL, an individual

Defendants Jointly and Severally.

Case No: 2024-207657-CB

Honorable Victoria Valentine

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OPINION AND ORDER REGARDING DEFENDANTS RANDALL RESIDENCE LLC AND CHRISTOPHER C. RANDALL'S MOTION FOR SUMMARY DISPOSITION

At a session of said Court held on the
28th day of August 2024 in the County of
Oakland, State of Michigan

PRESENT: HON. VICTORIA A. VALENTINE

This matter is before the Court on Defendants Randall Residence LLC and Christopher Randall's Motion for Summary Disposition under MCR 2.116(C)(8), which seeks dismissal of Plaintiff's 5–count complaint. The Court has reviewed the Court file, has reviewed the parties' submissions, and has heard oral argument. For the reasons set forth below, Defendants' Motion is DENIED.

OVERVIEW

Plaintiff's Complaint alleges that Defendants Randall Residence of Sterling Heights, LLC and Defendant Randall Residence of Auburn Hills LLC are affiliates of Defendant Randall Residence LLC (" Randall Residence").[1] It further alleges that "[o]n or about February 25, 2021, and March 31, 2021, [Plaintiff,]Assist One and Randall Residence entered into two Staffing Agreements.[2] Pursuant to the Staffing Agreements, Assist 1 sent Randall Residence monthly invoices for services rendered."[3] As of May 17, 2024, Defendants were in arrears for a total principal amount currently owed of: (a) $44,904.96 for nursing services provided by Assist 1 at the Randall Residence of Auburn Hills LLC; and (b) $60,255.04 for nursing services provided by Assist 1 at Randall Residence of Sterling Heights.[4] On March 14, 2024, Assist 1 sent Randall Residence two letters demanding immediate payment of the overdue invoices.[5] Randall responded with two identical emails under the designation "Chief Executive officer, Randall Residence," stating that both Randall Residence of Auburn Hills and Randall Residence of Sterling Heights

[1] Complaint ¶¶ 3-5.
[2] Complaint ¶13; Exhibit 1, Randall Residence Agreement; Exhibit 2**,** Randall Residence Sterling Heights; Exhibits attached thereto.
[3] Complaint ¶14.
[4] Complaint ¶15, Exhibit 3 and Exhibit 4 attached thereto.
[5] Complaint ¶18, Exhibit 5 attached thereto.

have no remaining assets to pay Assist 1 as both had been liquidated and no formal bankruptcy proceedings were planned.[6] Consequently, Plaintiff filed 5-count complaint against:

- Randall Residence LLC
- Randall Residence of Auburn Hills LLC
- Randall Residence of Sterling Heights LLC
- Christopher Randall

Plaintiff's 5-count complaint alleges alter ego (Count I), breach of contract (Count II), account stated (Count III), unjust enrichment (Count IV), and promissory estoppel (Count V).

Default Judgments were entered against Defendant Randall Residence of Auburn Hills and Randall Residence of Sterling Heights.

The remaining Defendants, Randall Residence LLC and Christopher Randall, now file this (C)(8) motion, arguing that Counts II through V should be dismissed because these two remaining Defendants were not parties to the agreements at issue—rather the agreements at issue were between Plaintiff and the defaulted Defendants; and that Count I should be dismissed because Plaintiff's veil-piercing/alter ego doctrine is a post-judgment remedy, not a cause of action.

Plaintiff argues that Defendants' claim, that a veil-piercing/alter ego doctrine can only be brought in a separate action after a judgment has been entered--not at the outset in this original case--is unsupported by Michigan law.

STANDARD OF REVIEW

Because this is a (C)(8) Motion, the Court is limited to reviewing only the pleadings and the documents attached to the pleadings. See also MCR 2.113(C)(2). Our Michigan Supreme Court "emphasize[d] that a motion for summary disposition under MCR 2.116(C)(8) must be decided on the pleadings alone and that all factual allegations must be taken as true." *El-Khalil v Oakwood*

[6] Complaint ¶19, Exhibit 6 attached thereto.

Health Care, Inc, 504 Mich 152, 155 (2019). And while materials attached to a complaint become part of the pleading, MCR 2.113(C)(2), they do not automatically permit consideration of the material as substantive evidence. *Krieger v Department of Environment,* __Mich App__ (released 9/7/2023), 2023 WL 5808605 * 7; El-*Khalil*, 504 Mich at 163.

"[A]ll well-pleaded allegations are accepted as true and construed most favorably to the non-moving party." *Wade v Dep't of Corrections*, 439 Mich 158, 162-163 (1992). "A mere statement of a pleader's conclusions and statements of law, unsupported by allegations of fact, will not suffice to state a cause of action." *Varela v Spanski,* 329 Mich App 58, 79 (2019) (plaintiff failed to plead facts in support of his claim but instead made conclusory statements and conclusions of law).

A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Wade*, 439 Mich at 163. Because Michigan is a notice-pleading jurisdiction, a complaint is required to contain only enough information "reasonably to inform the defendant of the nature of the claim against which he must defend." *Veritas Auto Machinery, LLC v FCA Int'l Operations, LLC*, 335 Mich App 602, 615 (2021); MCR 2.111(B)(1).

ANALYSIS

The Court has read the briefs, and the case law cited therein and agrees with Plaintiff that Defendants fail to cite to binding authority supporting its supposition that the imposition of liability under the doctrine of alter ego/piercing the corporate veil requires an **underlying judgment**. While the Court agrees with Defendants that piercing the corporate veil in an equitable remedy and not a cause of action, this remedy nevertheless provides a party with a means to impose liability on **underlying causes of action**, such as here, where Plaintiff alleges breach of contract and other

causes of action.

Michigan law respects the corporate form, and the courts generally recognize and enforce separate corporate entities. *Gallagher v Persha*, 315 Mich App 647 653–654 (2016). Business entities are generally treated as legal entities that are distinct from their shareholders, even where just one person owns all of the corporation's stock. *Foodland Distributors v. Al–Naimi*, 220 Mich App 453, 456 (1996). A member or manager of an LLC is generally not liable for the acts, debts, or obligations of the LLC. *Duray Dev. LLC v. Perrin*, 288 Mich. App. 143, 151 (2010); MCL 450.4501(4).

However, courts may ignore the legal fiction of an LLC if it is used to avoid liability. *Florence Cement Co. v. Vettraino*, 292 Mich. App. 461, 469 (2011). When the legal form of a business is abused, it will be pierced to allow creditors to satisfy payment of corporate debt from a responsible corporate member. *Gallagher*, 315 Mich. App. at 654.

Piercing the corporate veil is an equitable remedy, which is used sparingly to remedy injustices that would otherwise not be cured in those situations where the corporate form has been used to avoid legal responsibilities. *Id.* It is a remedy, not a separate cause of action. *Id.* "In order for a court to order a corporate veil to be pierced, the corporate entity (1) must be a mere instrumentality of another individual or entity, (2) must have been used to commit a wrong or fraud, and (3) there must have been an unjust injury or loss to the plaintiff." *Florence Cement Co.*, 292 Mich. App. at 469.[7] Notably absent is a requirement that an underlying post judgment must

[7] Our Michigan Court of Appeals has held that when deciding whether to pierce the corporate veil, "a court must first examine the totality of the evidence surrounding the owner's use of an artificial entity and, in particular, the manner in which the entity was employed in the manner at issue." *Green v. Ziegelman,* 310 Mich App 436, 458 (2015). The court must then discern if the evidence supports a conclusion that the owner operated the corporate entity "as his or her alter ego—that is, as a sham or mere agent or instrumentality of his or her will." *Id.* The court must then decide if "the manner of use effected a fraud or wrong on the complainant." *Id.*

In paragraphs 23-43 of its Complaint, Plaintiff alleges facts relating to alter ego/pierce the corporate veil. Defendants do not argue that such alleged facts fail to support a veil piercing theory.

be entered to impose this remedy.

To support its supposition that an underlying judgment is required to support a veil-piercing/alter ego doctrine, Defendants rely on the nonbinding federal district court opinion of *Hillman Power Company LLC v On-Site Equipment Maintenance Inc,* 632 F Supp 3d 736 (ED Mich 2022), which this Court finds unpersuasive.[8] There the district court, in a 3-page opinion, denied Plaintiff's request to amend its complaint to add a count of piercing Defendant's corporate veil. In denying Plaintiff's request, the *Hillman* Court found that "'[i]t is well established that piercing the corporate veil is not itself a cause of action'; it is a **post judgment** remedy." *Hillman,* 632 F3d at 739. (emphasis added). To support its quote, the *Hillman* Court cites to the unpublished federal district court case of *Brennan v Nat'l Action Fin Servs, Inc*, 2012 WL 3888218 at *3 (ED Mich 2012), which in turn cites to a collection of cases. Neither *Brennan*, nor the collection of cases cited therein, however, support the *Hillman* ruling that piercing the corporate veil is a **post judgment** remedy. Rather, these cases establish that piercing the corporate veil is not itself a cause of action nor does it create a substantive cause of action; it is, however, a means of imposing liability on an underlying cause of action.[9] In the instant matter, Plaintiff alleges underlying causes

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[8] Decisions from other states or the federal courts are not binding, but we may find them persuasive. *Barshaw v Allegheny Performance Plastics LLC*, 334 Mich App 741, 756 n 7 (2020).

[9] The *Brennan* Court found:

> "It is well established that piercing the corporate veil is not itself a cause of action. *See, e.g., In re RCS Engineered Prods. Co.,* 102 F.3d 223, 226 (6th Cir.1996) ("[A]n alter ego claim is not by itself a cause of action.") (applying Michigan law); *Morris v. N.Y. State Dep't of Taxation and Fin.,* 82 N.Y.2d 135, 143, 603 N.Y.S.2d 807, 623 N.E.2d 1157 (1993) ("[A]n attempt of a third party to pierce the corporate veil does not constitute a cause of action independent of that against the corporation; rather it is an assertion of facts and circumstances which will persuade the court to impose the corporate obligation on its owners."); *In re Tex. Am. Express, Inc.,* 190 S.W.3d 720, 725–26, (Tex.App.2005) ("The doctrines that support piercing the corporate veil do not create substantive causes of action. The claim is purely remedial.") (citations omitted). *Instead, piercing the corporate veil is an equitable remedy that provides a party with a means to impose liability on an underlying cause of action*. *See, e.g., Tamko Roofing Prods., Inc. v. Smith Eng'g Co.,* 450 F.3d 822, 826 n. 2 (8th Cir.2006) ("[P]iercing the corporate veil under an alter ego theory is best thought of as a

of action for which it seeks to impose liability on Defendants under this doctrine.

The *Hillman* Court also cites to *Gallager v Persha,* 315 Mich App 647 (2016), where the plaintiffs brought a breach of contract claim and received a judgment against a corporation. Plaintiffs subsequently brought a separate cause of action against the sole shareholder of the corporation, seeking to pierce the corporate veil. The trial court dismissed the piercing the corporate veil claim, finding that it was a remedy and not a separate cause of action. *Id.* at 652-653.

On appeal, the Court of Appeals agreed that piercing the corporate veil of a corporate entity is a remedy, not a separate cause of action. *Id.* At 654. The Court, however, went on to hold:

> But this case is not controlled by that principle, for what is at issue here is how a judgment-plaintiff procedurally pursues the piercing remedy once it is established that the corporate entity cannot pay the judgment, and there is some evidence or reason to believe that the corporate form has been abused to avoid legal obligations. We know that supplementary proceeding under MCR 2.612 and MCL 600.6104(5) cannot be utilized, see *Green v Ziegleman,* 282 Mich App 292. 303, 767 NW 2d 660 (2009) (Green I), **but must the remedy be pleaded as part of the original case or forever be barred?** Or can a new case be filed to enforce the outstanding judgment against responsible shareholders if the facts allow piercing of the corporate veil even if no separate cause of action has been pleaded. [*Gallager,* 315 Mich App at 654 (emphasis added).]

The court answered the latter question in the affirmative:

> We hold that plaintiffs were entitled to bring a new action in an attempt to enforce the prior [judgment against the corporation] against [the shareholder]. While we continue to recognize that piercing the corporate veil is merely a remedy to be applied in certain limited circumstances, the concern that there be a separate cause of action to support this type of equitable relief does not

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> remedy to enforce a substantive right, and not as an independent cause of action."); *Peetoom v. Swanson,* 334 Ill.App.3d 523, 527, 268 Ill. Dec. 305, 778 N.E.2d 291 (Ill.App.Ct.2002) ("*The doctrine of piercing the corporate veil is an equitable remedy; it is not itself a cause of action but rather is a means of imposing liability on an underlying cause of action, such as a tort or breach of contract.").*

Brennan, supra at *3. (Emphasis added).

> arise when, as in this case, there already exists a judgment based upon one or more causes of action. In other words, a party certainly needs to successfully pursue a cause of action before it can pursue a remedy, but having already obtained a judgment against the corporation on their personal injury claim, plaintiffs sought, through the lawsuit at issue here, to establish the judgment obtained against the corporation was also a judgment against the defendants in their individual capacities.

Gallager, 315 Mich App at 661. (internal citations and quotations omitted).

Therefore, while the *Gallager* Court found that the Plaintiff could pursue veil piercing remedies in a new filed action, it neither found that that was the only manner in which Plaintiff could pursue such remedies nor that Plaintiff was precluded from seeking those remedies in the original action. Accordingly, the Court agrees with Plaintiff that the holding in *Gallager* indicates that a piercing the corporate veil remedy could be pled "as part of the original case." *Accord*, "The party asking the trial court to disregard the separate existence of an entity may do so in his or her original complaint or may do so in a subsequent complaint after a judgment has been entered against the entity." *Hinderer v Snyder*, 2019 WL 360732 *9, citing *Gallager,* supra at 665-666.

Based on the above, the Court agrees with Plaintiff that Defendant's cited authority does not support its supposition.[10] As a result, the Court finds that even though Plaintiff's alter ego (Count I) cause of action is not an independent cause of action, it is nevertheless a remedy that may be imposed in this original action if Plaintiff is successful on the underlying causes of action and can establish the requisite requirements to pierce the corporate veil.

[10] It is well-settled that "[t]rial courts are not the research assistants of the litigants" and that "the parties have a duty to fully present their legal arguments to the court for its resolution of their dispute." *Walters v Nadell*, 481 Mich 377, 388 (2008). "A party may not merely announce its position and leave it to this Court to discover and rationalize the basis for [its] claims, or give issues cursory treatment with little or no citation to supporting authority." *Wolfe v Wayne-Westland Community Schs*, 267 Mich App 130, 139 (2005). *See also Moses, Inc v Southeast Mich Council of Governments*, 270 Mich App 401, 417 (2006) ("If a party fails to adequately brief a position, or support a claim with authority, it is abandoned.")

Therefore, when viewing Plaintiff's complaint as a whole, Plaintiff, while asserting a cause of action for alter ego, is in actuality attempting to establish a remedy against the remaining Defendants for liability under the alleged underlying causes of action, which are in dispute.[11]

ORDER

Based upon the foregoing Opinion:

IT IS HEREBY ORDERED that Defendants' Motion for Summary Disposition pursuant to MCR 2.116(C)(8) is DENIED.

This Order does NOT resolve the last pending matter and does NOT close the case.

/s/Victoria A. Valentine

HON. VICTORIA A. VALENTINE
CIRCUIT COURT JUDGE

Dated: 8/28/24

[11] A court determines the "gravamen of a party's claim by reviewing the entire claim, and a party cannot avoid dismissal of a cause of action by artful pleading." *Attorney General v Merck Sharp & Dohme Corp*, 292 Mich App 1, 9-10 (2011). "It is well settled that the gravamen of an action is determined by reading the complaint as a whole, and by looking beyond mere procedural labels to determine the exact nature of the claim." *Adams v Adams*, 276 Mich App 704, 710-711 (2007). In *Jahnke v Allen*, 308 Mich App 472, 475 (2014), this Court stated that a court is not bound by the label a party gives its claim.