STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

V & B PROPERTIES, L.L.C.,

Plaintiff,

vs.

ACCOUNT-ABILITY TAX & ACCOUNTING L.L.C.; JILL SCHNEIDER; LARRY SCHNEIDER; and GRANDVILLE TAX & ACCOUNTING, INC.,

Defendants.
_____/

Case No. 19-00108-CBB

HON. CHRISTOPHER P. YATES

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND VERDICT

This case arises from a tenant's elaborate attempt to avoid responsibilities it chose to assume in signing a commercial lease. In 2015, Plaintiff V & B Properties, L.L.C. ("V&B") and Defendant Account-Ability Tax & Accounting L.L.C. ("Account-Ability") executed a lease agreement binding Account-Ability to a five-year obligation to pay rent for space in a commercial building that V&B owned. Despite rent concessions made by V&B in 2017, Account-Ability fell hopelessly behind in its rent payments. In 2018, Account-Ability surrendered possession of the commercial property and admitted that it was more than $6,300 in arrears in rent payments. Had Account-Ability made efforts to satisfy that obligation, this lawsuit might never have been filed. But Account-Ability gave way to a new company, *i.e.*, Defendant Grandville Tax & Accounting, Inc. ("GTA"), and Defendant Jill Schneider transferred Account-Ability's assets to that entity, cancelled checks to V&B, and stymied V&B's collection efforts. Following a bench trial, the Court shall render a verdict not only against Account-Ability, but also against its principal, Jill Schneider, and its successor, GTA.

I. Findings of Fact

Pursuant to MCR 2.517(A)(1), in an action tried without a jury, "the court shall find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment." The Court must render "[b]rief, definite, and pertinent findings and conclusions on the contested matters" that may take the form of "a written opinion." See MCR 2.517(A)(2) & (3). Accordingly, the Court shall begin with findings of fact, followed by conclusions of law, and ultimately the verdict.

Plaintiff V&B and Defendant Account-Ability signed a "Commercial Lease Agreement" that went into effect on April 1, 2015. See Plaintiff's Exhibit 1. Under that lease agreement, Account-Ability obtained possession of office space in the Millennium Building at 3980 Chicago Drive in Grandville, Michigan, in exchange for a promise to make monthly base rent payments of $1,000 and to pay "additional rent" for 60 months. Id. (Commercial Lease Agreement, §§ 1.1(H), 2.1(a), 3.1(a) & 3.2). After moving into the commercial building, Account-Ability fell behind in its rent payments, so V&B agreed to provide rent concessions, which were memorialized in an amendment to the lease that the contracting parties executed in July of 2017. No good deed goes unpunished, however, so Account-Ability not only fell behind in its rent payments almost immediately after receiving rent concessions, but also vacated the premises in March 2018 owing more than $6,300 to V&B. See Plaintiff's Exhibit 6.

After Defendant Account-Ability moved out of the premises, Plaintiff V&B gave Account-Ability one additional break by excusing Account-Ability's obligation to make rent payments from January 1, 2019, forward. See Plaintiff's Exhibit 7. But V&B understandably pursued recompense from Account-Ability for unpaid rent. Then the games began. V&B found out that Account-Ability had transferred its assets and operations to Defendant GTA, which was formed on May 11, 2018 –

soon after Account-Ability vacated the office space it had rented from V&B. See Plaintiff's Exhibit 12 (articles of incorporation for GTA). Additionally, Defendant Larry Schneider – the husband of Account-Ability's principal, Defendant Jill Schneider – had created GTA. See id. Beyond that, several months later, Jill Schneider formally dissolved Account-Ability on October 5, 2018. See Plaintiff's Exhibit 11. Finally, to make matters worse, Jill Schneider cancelled payment on checks that she had furnished to V&B. See, e.g., Plaintiff's Exhibit 8. Remarkably, Jill Schneider testified that funds were available to cover the checks, but she cancelled payment on those checks to V&B because she thought she had worked out an arrangement for payment with V&B.[1] In Jill Schneider's view, the agreement permitted Account-Ability to either pay $6,300.33 to remain in the leased space or vacate the premises and owe nothing to V&B. But the possession judgment reflects no "either-or" arrangement of that nature. See Plaintiff's Exhibit 6.

By the end of 2018, Plaintiff V&B had finally had enough of Defendants Account-Ability and Jill Schneider, so on January 2, 2019, V&B filed suit against those defendants and Defendants Larry Schneider and GTA. V&B's complaint included claims for breach of the lease agreement, dishonor of negotiable instruments, impermissible distributions under the Michigan Limited Liability Company Act, MCL 450.4307, avoidable transfers, and mere continuation as a method for imposing the liability of Account-Ability upon GTA. On October 25, 2021, the Court conducted a one-day bench trial where V&B offered testimony from its own property manager, Jill Schneider, and – by

[1] The Court encountered great difficulty sorting out the cancelled checks because Defendant Jill Schneider refused to produce bank statements during discovery. Astonishingly, she responded to one legitimate discovery request with the comment: "No – none of his business." See Plaintiff's Exhibit 9 (Document Request 1 seeking "monthly statements for the checking account of Account-Ability Tax & Accounting LLC, from January 1, 2018 to present"). Undaunted, Plaintiff V&B ultimately obtained the bank records directly from JPMorgan Chase Bank. See Plaintiff's Exhibit 20.

agreement – Larry Schneider's deposition testimony. See Plaintiff's Exhibit 22. Now, based upon the evidence adduced at that trial, the Court must determine which defendants are subject to liability for the legal obligations of Account-Ability and the actions of Jill and Larry Schneider.

II. Conclusions of Law

Although Plaintiff V&B has presented five separate claims in its complaint, the most logical way to approach resolution of this dispute is to focus upon each of the four defendants individually. Thus, the Court shall begin its analysis by discussing the responsibility of Defendant Account-Ability pursuant to its "Commercial Lease Agreement" with V&B. Then the Court shall turn to the liability of Jill Schneider for the cancelled checks to V&B and her operation of Account-Ability. Next, the Court shall consider whether Defendant GTA must share the obligations of Account-Ability to V&B. Finally, the Court shall ascertain whether Defendant Larry Schneider bears any responsibility for the damages to V&B.

A. Claims Against Account-Ability.

Because Defendant Account-Ability entered into a contract with Plaintiff V&B in the form of a "Commercial Lease Agreement," see Plaintiff's Exhibit 1, V&B's first claim against Account-Ability is for breach of contract. See Complaint, Count I – Breach of Lease Agreement. To prevail on that claim, V&B must demonstrate "that (1) there was a contract, (2) the other party breached the contract, and (3) the breach resulted in damages to" V&B. Bank of America, NA v First American Title Ins Co, 499 Mich 74, 100 (2016). The "Commercial Lease Agreement" manifestly constitutes an enforceable contract, see Plaintiff's Exhibit 1, and Account-Ability has even acknowledged that it breached the commercial lease agreement by failing to make timely rent payments to V&B. See

Plaintiff's Exhibit 6. Accordingly, the Court simply must determine the amount of damages incurred by V&B as a result of Account-Ability's breach.

Plaintiff V&B must prove "'its damages with reasonable certainty, and may recover only those damages that are the direct, natural, and proximate result of the breach.'" Van Buren Charter Township v Visteon Corp, 319 Mich App 538, 550 (2017). "'[D]amages must not be conjectural or speculative in their nature[.]'" Id. at 551. "Although breach-of-contract damages need not be precisely established, 'uncertainty as to the fact of the amount of damages caused by the breach of contract is fatal[.]'" Id. The purpose of awarding damages for a breach of contract "is to give the innocent party the benefit of [its] bargain – to place [it] in a position equivalent to that which [it] would have attained had the contract been performed." Tel-Ex Plaza, Inc v Hardees Restaurants, Inc, 76 Mich App 131, 134 (1977); see also M Civ JI 142.31.

Plaintiff V&B has furnished a detailed computation of its damages resulting from the breach of the commercial lease agreement. See Plaintiff's Exhibit 7. Specifically, V&B lost $25,898.85 because of Defendant Account-Ability's premature termination of the lease and its refusal to make payments under that lease. See id. Beyond that, section 9.7 of the "Commercial Lease Agreement" provides that Account-Ability "shall pay all actual reasonable attorneys' fees and expenses incurred by [V&B] in enforcing any provision of this Lease, but only if [V&B] is the prevailing party." See Plaintiff's Exhibit 1. Because V&B filed suit to enforce terms of the lease agreement and is now the prevailing party by virtue of the Court's findings of fact and conclusions of law concerning V&B's claim for breach of contract, V&B has a contractual right to recover its "reasonable attorneys' fees" under Michigan law. Great Lakes Shores, Inc v Bartley, 311 Mich App 252, 255 (2015). Although V&B has provided the Court with the materials necessary to compute a "reasonable" attorney fee,

see Plaintiff's Exhibits 4, 5 & 24, the Court shall not make that award until the defendants have the opportunity to take part in an evidentiary hearing where they can contest the reasonableness of the attorney fees requested by V&B.

B. Claims Against Jill Schneider.

Defendant Jill Schneider plainly does not subscribe to Will Rogers's suggestion that "if you find yourself in a hole, stop digging." Acting on behalf of Defendant Account-Ability, Jill Schneider failed to make the company's rent payments, then gave checks to Plaintiff V&B to cover Account-Ability's obligations to V&B but subsequently cancelled payment on those checks, then transferred all of Account-Ability's assets and operations to GTA, then refused to provide meaningful discovery to V&B. The Court hardly knows where to begin in addressing all of these transgressions, but V&B has suggested that piercing the corporate veil of Account-Ability to render Jill Schneider responsible for V&B's damages is the best way to cut the Gordian Knot. The Court agrees.

Piercing the veil of a corporation "is an equitable remedy sparingly invoked to cure certain injustices that would otherwise go unredressed in situations 'where the corporate entity has been used to avoid legal obligations.'" Gallagher v Persha, 315 Mich App 647, 654 (2016). "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." See Florence Cement Co v Vettraino, 292 Mich App 461, 469 (2011). The "[f]actors used by courts to determine the propriety of piercing the corporate veil include: (1) whether the corporation is undercapitalized, (2) whether separate books are kept, (3) whether there are separate finances for the corporation, (4) whether the corporation is

used for fraud or illegality, (5) whether corporate formalities have been followed, and (6) whether the corporation is a sham." Glenn v TPI Petroleum, Inc, 305 Mich App 698, 716 (2014). Thus, the Court must focus upon those factors in deciding whether to pierce the corporate veil of Defendant Account-Ability to impose liability for its debts upon its principal, Defendant Jill Schneider.

The Court readily concludes that Defendant Account-Ability was "a mere instrumentality of" Defendant Jill Schneider. See Florence Cement, 292 Mich App at 469. The monthly bank records of Account-Ability establish that Jill Schneider ran her entire life out of the company's bank account. See Plaintiff's Exhibit 20. Jill Schneider routinely bought groceries, gas, and meals using Account-Ability's bank account. See id. Jill Schneider admitted during her trial testimony that she even used funds from Account-Ability to make $17,000 in loans to her son, Erik, that her son had no business relationship whatsoever with Account-Ability, and that her son never paid back the loans. Although the Court has no basis for deciding that Account-Ability was undercapitalized because Jill Schneider refused to provide basic discovery about the company to Plaintiff V&B, see, e.g., Plaintiff's Exhibit 9 (responses to requests for documents), V&B convincingly asserts that the Court should draw an adverse inference about Account-Ability's capitalization based upon Jill Schneider's non-responses to legitimate discovery requests. See M Civ JI 6.01. Beyond that, Account-Ability's monthly bank statements are littered with insufficient-funds fees charged to the company. See Plaintiff's Exhibit 20 at pp 6-7, 12, 19, 41, 46-47. Therefore, for a host of reasons, the Court finds that Account-Ability was "a mere instrumentality of" Jill Schneider. See Florence Concrete, 292 Mich App at 469.

The Court further concludes that Defendant Account-Ability was "used to commit a wrong or fraud," as contemplated by Michigan law. Florence Concrete, 292 Mich App at 469. Specifically, in surrendering possession of the leased premises, Account-Ability acknowledged in court that it

owed its landlord, Plaintiff V&B, more than $6,300. See Plaintiff's Exhibit 6. Yet Account-Ability – through the actions of Defendant Jill Schneider – almost immediately turned around and cancelled payment on checks to V&B for a portion of that amount. See Plaintiff's Exhibit 8. Beyond that, the assets of Account-Ability were promptly transferred to Defendant GTA, thereby rendering Account-Ability uncollectible. Finally, Jill Schneider formally dissolved Account-Ability on October 5, 2018, see Plaintiff's Exhibit 11, without making any effort before dissolution to pay V&B any portion of what Account-Ability owed.

The Court further finds, both as a matter of fact and a matter of law, that there was "an unjust injury or loss to the plaintiff." Florence Cement, 292 Mich App at 469. When Defendant Account-Ability ran into difficulty paying its rent, Plaintiff V&B made rent concessions to Account-Ability. See Plaintiff's Exhibit 2. Additionally, V&B accepted checks from Account-Ability to cover rent obligations and to resolve the transfer of possession in March 2018, see Plaintiff's Exhibit 6, but Account-Ability then cancelled payment on the checks, see Plaintiff's Exhibits 8 & 13, leaving V&B bereft of payment. In addition, Account-Ability made itself judgment-proof by transferring its assets to GTA and then dissolving. See Plaintiff's Exhibit 11. In sum, Account-Ability stripped away from V&B every form of payment and every avenue of recovery, leaving V&B at a total loss. Thus, the Court shall pierce the corporate veil of Account-Ability to impose upon its principal, Defendant Jill Schneider, all the damages assessed against Account-Ability. See Gallagher, 315 Mich App at 662 (explaining how "'the judgment obtained against the corporation was also a judgment against the defendants in their individual capacities'"). Jill Schneider's actions while operating Account-Ability leave the Court no choice but to strip away the legal protections typically afforded to the owners and managers of a business that assumes the corporate form.

C. Claims Against Grandville Tax & Accounting.

Plaintiff V&B's principal theory against Defendant GTA is that of "mere continuation." Under Michigan law, the Court may impose successor liability for the obligations of a predecessor corporation upon a successor corporation that receives the assets of the predecessor corporation if "'the transferee corporation was a mere continuation or reincarnation of the old corporation.'" Foster v Cone-Blanchard Machine Co, 460 Mich 696, 702 (1999). "[C]ontinuity of enterprise between a successor and its predecessor may force a successor to 'accept the liability with the benefits' of such continuity." Id. at 703. "[A] prima facie case of continuity of enterprise exists" whenever: "(1) there is a continuation of the seller corporation, so that there is a continuity of management, personnel, physical location, assets, and general business operations of the predecessor corporation; (2) the predecessor corporation ceases its ordinary business operations, liquidates, and dissolves as soon as legally and practically possible; and (3) the purchasing corporation assumes those liabilities and obligations of the seller ordinarily necessary for the uninterrupted continuation of normal business operations of the selling corporation." Id. at 703-704. Our Court of Appeals has consistently ruled that "successor liability applies to corporations and limited liability companies in purely commercial contexts, such as a breach of a lease agreement." See, e.g., Lakeview Commons Ltd Partnership v Empower Yourself, LLC, 290 Mich App 503, 508 (2010), citing RDM Holdings, Ltd v Continental Plastics Co, 281 Mich App 678, 717-719 (2008). Here, the evidence at trial leads ineluctably to the conclusion that GTA is a "mere continuation" of Defendant Account-Ability. As a result, this is an appropriate case to impose upon GTA legal responsibility for the obligations of Account-Ability to Plaintiff V&B. Indeed, the facts of this case present a textbook example of the "mere continuation" theory of successor liability.

Defendant Account-Ability transferred all of its assets to Defendant GTA, so GTA operated its business using Account-Ability's assets. Although Defendant Larry Schneider formed GTA, see Plaintiff's Exhibit 12, the trial record establishes that he played no role in the business of GTA. The business was run entirely by Defendant Jill Schneider, see, e.g., Plaintiff's Exhibit 18, who served as the public face of GTA. See, e.g., Plaintiff's Exhibits 15 & 16. Moreover, the GTA website even refers repeatedly to "Account-Ability Tax & Accounting" in touting its services. See id. Our Court of Appeals has described as "'pertinent'" "'whether the purchasing corporation held itself out to the world as the effective continuation of the seller corporation[,]'" Commonwealth Land Title Ins Co v Metro Title Corp, 315 Mich App 312, 316 (2016), and GTA did precisely that. Therefore, Plaintiff V&B has established the first element of "a prima facie case of continuity of enterprise[.]" Foster, 460 Mich at 703.

To prove the second element of a prima facie case of continuity of enterprise, Plaintiff V&B had to show that Defendant Account-Ability "cease[d] its ordinary business operations, liquidate[d], and dissolve[d] as soon as legally and practically possible[.]" Foster, 460 Mich at 703-704. V&B has satisfied that obligation. In March 2018, Account-Ability agreed to vacate the space it had leased from V&B. See Plaintiff's Exhibit 6. Account-Ability then signed a lease at a different location for the benefit of Defendant GTA, which was thereafter formed under Michigan law on May 11, 2018.[2] See Plaintiff's Exhibit 12. After a transition period of a few months, which enabled Account-Ability to transfer its assets and transition its customers to GTA, Defendant Jill Schneider formally dissolved Account-Ability on October 5, 2018. See Plaintiff's Exhibit 11.

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[2] Many details about Defendant GTA's formation and business operations cannot be gleaned from the evidence at trial because Defendant Jill Schneider and GTA improperly refused to provide discovery about the formation of the company. See Plaintiff's Exhibit 9.

The final element of "a prima facie case of continuity of enterprise" requires proof that "the purchasing corporation assume[d] those liabilities and obligations of the seller ordinarily necessary for the uninterrupted continuation of normal business operations of the selling corporation." Foster, 460 Mich at 704. Although the bulk of the business operations of Defendant GTA are shrouded in mystery because Defendants Jill Schneider and GTA refused to provide basic discovery about GTA, see Plaintiff's Exhibit 9, the record reveals that Defendant Account-Ability signed a new commercial lease for the benefit of GTA, and then GTA made the rent payments to maintain the business office. Additionally, GTA picked up the operation (and presumably the cost) of the business website after Account-Ability was dissolved. See Plaintiff's Exhibit 15 (GTA website as of December 28, 2018) & Plaintiff's Exhibit 18 (e-mail to "jill@grandvilletax.com" advising Jill Schneider "I have updated your website as discussed"). Moreover, the GTA website repeatedly refers to Account-Ability, see Plaintiff's Exhibits 15 & 16, thereby establishing that "the purchasing corporation [*i.e.*, GTA] holds itself out to the world as the effective continuation of the seller corporation[,]" *i.e.*, Account-Ability. See Foster, 460 Mich at 704. Therefore, based upon the principle of successor liability in the form of "'mere continuation or reincarnation of the old corporation[,]'" see Foster, 460 Mich at 702, the Court concludes that GTA is responsible for Account-Ability's obligations to Plaintiff V&B.

D. Claims Against Larry Schneider.

Plaintiff V&B has asked to impose Defendant Account-Ability's obligations upon Defendant Larry Schneider, who formed Defendant GTA, but the Court regards that request as a bridge too far. According to V&B, Larry Schneider played an essential role in the transfer of assets from Defendant Account-Ability to GTA by formally creating GTA at a time when Defendant Jill Schneider was not

sufficiently creditworthy to start a new business. See Plaintiff's Exhibit 12 (articles of incorporation identifying "Larry L Schneider" as "Incorporator" of GTA). But even if Larry Schneider acted at the behest of his wife, Jill Schneider, in forming GTA without an intent to participate in its business, the Court cannot attach responsibility for Account-Ability's obligations to Larry Schneider. To be sure, the Court elected to assign responsibility to GTA for Account-Ability's obligations to V&B, but that decision does not necessarily mean that Larry Schneider should bear personal responsibility to V&B for Account-Ability's obligations. V&B can only obtain damages from Larry Schneider if the Court has a basis to pierce the corporate veil of GTA to reach Larry Schneider.

Piercing the veil of a corporation "is an equitable remedy sparingly invoked to cure certain injustices that would otherwise go unredressed in situations where the corporate entity has been used to avoid legal obligations." See Gallagher, 315 Mich App at 654. By all accounts, Defendant Larry Schneider neither owed any legal obligations relating to Defendant Account-Ability nor had any kind of involvement in the business of Defendant GTA. Accordingly, Larry Schneider's creation of GTA was not undertaken to enable him to avoid his legal obligations, nor were the business practices of GTA conducted in a manner that effectively rendered GTA his private piggy bank. Instead, his wife – Defendant Jill Schneider – transferred Account-Ability's assets to GTA to avoid Account-Ability's liability, and Jill Schneider ran GTA in a manner that may have allowed her to use the new company as her private piggy bank. Therefore, the Court cannot apply Michigan law in any manner that would justify imposing liability upon Larry Schneider for Account-Ability's obligations to V&B.[3]

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[3] None of Plaintiff V&B's alternative theories of liability can be applied to Defendant Larry Schneider in his personal capacity. For example, Larry Schneider is not personally accountable even if his wife, Defendant Jill Schneider, orchestrated a distribution from Defendant Account-Ability to Defendant GTA in violation of the Michigan Limited Liability Company Act, MCL 450.4307. Nor did Larry Schneider have anything to do with cancelling payment on the checks provided to V&B.

III. Verdict

For the reasons stated in the Court's findings of fact and conclusions of law, the Court hereby renders a verdict in favor of Plaintiff V&B and against Defendants Account-Ability, Jill Schneider, and GTA in the amount of $25,898.85, augmented by an award of "reasonable" attorney fees, court costs to the "prevailing party," see MCR 2.625(A)(1), and prejudgment interest. But the Court shall render a verdict in favor of Defendant Larry Schneider with respect to all claims against him in his personal capacity, so Larry Schneider shall bear no responsibility to V&B. What remains, therefore, is the determination of reasonable attorney fees for V&B that must be paid by Account-Ability, Jill Schneider, and GTA. The Court shall schedule an evidentiary hearing, see B&B Investment Group v Gitler, 229 Mich App 1, 15-17 (1998), where V&B can support its request for reasonable attorney fees and the defendants may challenge V&B's evidence concerning attorney fees under the analysis prescribed in Pirgu v United Services Auto Ass'n, 499 Mich 269, 281 (2016).

IT IS SO ORDERED.

Dated: December 10, 2021

HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge