COURT OF APPEALS
DECISION
DATED AND FILED

January 22, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-1713 **Cir. Ct. No. 00 SC 16234**

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

MICHAEL T. ROHRER AND
JENNIFER C. ROHRER,

PLAINTIFFS-APPELLANTS,

V.

MARK T. WILLIS AND BRIAN D. BASSEL,

DEFENDANTS,

DONALD KERZNER,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: KITTY K. BRENNAN, Judge. *Affirmed.*

¶1 WEDEMEYER, P.J.[1] Michael T. and Jennifer C. Rohrer appeal from an order entered dismissing their complaint against Donald Kerzner. The Rohrers claim that the trial court erroneously exercised its discretion when it: (1) vacated their default judgment against Kerzner; and (2) granted Kerzner's motion to dismiss. Because the trial court did not erroneously exercise its discretion, this court affirms.

I. BACKGROUND

¶2 On June 9, 2000, the Rohrers filed a small claims summons and complaint against Mark T. Willis and Brian D. Bassel. It alleged that the Rohrers hired Willis and Bassel, doing business as "Badger Window & Remodeling," to replace nine windows in the Rohrer home. The Rohrers stated that the job was eventually completed, and they paid Badger $5000. The Rohrers allege that Badger never paid the manufacturer of the windows the amount owed for the Rohrer job. Badger filed for bankruptcy and the manufacturer placed a lien on the Rohrer home for the cost of the windows. Rohrer then paid the manufacturer in order to have the lien removed, and filed this small claims action against Willis and Bassel.

¶3 The complaint was subsequently amended to add Kerzner as an additional defendant. Kerzner did not appear on the return date and a default judgment was entered against him. Kerzner then filed a motion to re-open and vacate the judgment. He indicated that he had not been properly served. On June 8, 2001, the trial court granted the motion to open and vacate in the interests

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (1999-2000).

of justice. An evidentiary hearing was conducted by the court commissioner, who issued a written decision in favor of the Rohrers on November 19, 2001. Kerzner objected to the court commissioner's decision and filed a demand for a trial.

¶4 Before trial, Kerzner requested that the court dismiss the complaint for failure to state a claim. On May 14, 2002, the trial court granted Kerzner's motion to dismiss. The Rohrers now appeal.

II. DISCUSSION

A. Motion to Open/Vacate.

¶5 The Rohrers first argue the trial court erroneously exercised its discretion when it granted Kerzner's motion to open and vacate the default judgment they had secured. This court disagrees.

¶6 Review on this issue is subject to the erroneous exercise of discretion standard. ***Dugenske v. Dugenske***, 80 Wis. 2d 64, 68, 257 N.W.2d 865 (1977). This court will not disturb the trial court's ruling as long as it considered the pertinent facts, applied the correct law, and reached a reasonable determination. ***Id.***

¶7 The trial court granted the motion to open and vacate in the interests of justice. It did so because Kerzner indicated he had not been properly served and because he was not even associated with Badger Window at the time the Rohrers hired Badger. The trial court, in essence, found that there was good cause to vacate the default judgment against Kerzner. This court cannot conclude that the trial court's decision constituted an erroneous exercise of discretion.

¶8 According to WIS. STAT. § 799.29(1) (1999-2000), "the trial court may, by order, reopen default judgments upon notice and motion or petition duly made and good cause shown." Here, the trial court considered the facts, applied the correct statute, and reached a reasonable conclusion.

B. Motion to Dismiss.

¶9 The Rohrers also challenge the trial court's ruling dismissing their complaint against Kerzner. They argue that the trial court's dismissal was premature as they were attempting to recover from Kerzner under the theory of piercing the corporate veil, which is a viable cause of action in this state. Again, this court must reject the Rohrers' contention.

¶10 A motion to dismiss a complaint for the failure to state a claim challenges the legal sufficiency of the complaint. ***Weber v. City of Cedarburg***, 129 Wis. 2d 57, 64, 384 N.W.2d 333 (1986). Our review is limited to the face of the pleadings. ***Onderdonk v. Lamb***, 79 Wis. 2d 241, 245, 255 N.W.2d 507 (1977). The facts pled and all reasonable inferences from those facts are admitted as true. ***Watts v. Watts***, 137 Wis. 2d 506, 612, 405 N.W.2d 303 (1987). This court will affirm the dismissal of a complaint for the failure to state a claim only if it appears to a certainty that no relief can be granted under any set of facts that the plaintiff can prove in support of the allegations. ***Id.*** Whether a complaint states a claim upon which relief can be granted is a question of law that we review *de novo.* ***Id.***

¶11 Here, the trial court dismissed the complaint because the Rohrers did not present any allegation in their complaint, under which they could assert a viable claim against Kerzner. Kerzner was a shareholder in the corporation of

Badger Window, and thus not subject to personal liability for the actions of the corporation.

¶12 The trial court's decision was correct. Although the Rohrers allege on appeal that they wanted to pursue a piercing the corporate veil theory, there are no allegations in the pleadings to suggest that Kerzner is personally liable for the acts or debts of the corporation. There is no legal basis upon which a judgment against Kerzner can be supported.

¶13 The Rohrers' "piercing the corporate veil" theory was based solely on the fact that Kerzner was at one time a 75% shareholder in the corporation. This is insufficient. In order to pursue this theory, the Rohrers needed to allege that the corporation and the individual are really one and the same—that the corporation is just a shell for the individual. Several factors may be considered in attempting to pierce the corporate veil, including: "failure to observe corporate formalities, non-payment of dividends, siphoning of funds of the corporation by the dominant stockholder, non-functioning of other officers or directors, and the absence of corporate records." ***Olen v. Phelps***, 200 Wis. 2d 155, 163, 546 N.W.2d 176 (Ct. App. 1996). The Rohrers do not allege any of these factors, or any other factors, which support a theory of piercing the corporate veil.

¶14 In general, a shareholder will not be personally liable for the debts of the corporation. ***Wiebke v. Richardson & Sons, Inc.***, 83 Wis. 2d 359, 363, 265 N.W.2d 571 (1978). As noted by the trial court, the corporation is created in order to protect shareholders from liability. Based on the Rohrers' allegations, although they told the trial court they were seeking to pierce the corporate veil, there were no allegations to support such a theory. The Rohrers allege only that Kerzner should be liable simply because he was the majority shareholder of a corporation

that filed for bankruptcy. The Rohrers have failed to state a claim against Kerzner on the basis of the pleadings in this record.

By the Court.—Order affirmed.

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