

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ROBERT SLIFCO,

Plaintiff-Appellant,

and

GENESIS VII CORPORATION,

Plaintiff,

v

FARBOD H. TALAB, THOMAS M. NUNLEY,  
TALAB, NUNLEY & ASSOCIATES, P.C., and  
STEPHEN L. WEBER,

Defendants-Appellees.

UNPUBLISHED

January 20, 2005

No. 251221

Wayne Circuit Court

LC No. 02-224891-NM

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Before: Schuette, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Plaintiff Robert Slifco appeals as of right the trial court's dismissal of his claim of legal malpractice against defendants. The trial court granted summary disposition to defendants because it found that plaintiff failed to present any evidence of damages. We affirm.

This is a legal malpractice case based on defendants' representation of plaintiffs in a contract dispute. Plaintiffs contracted with Centipede Transportation Company (Centipede) for the removal of crushed concrete from a site where Genesis VII Corporation (Genesis) was doing demolition work. Slifco was the sole shareholder of Genesis. Plaintiffs were paid a total of \$156,000 for the concrete, and the contract specified that Centipede would remove the concrete within thirty days. Centipede did not remove the concrete within that time frame, and plaintiffs subsequently resold the concrete to another company for forgiveness of a debt of over \$100,000. Because plaintiffs resold the concrete, Centipede filed suit for return of the money it paid to plaintiffs. Centipede filed a motion for summary disposition in the underlying case, which was granted by the trial court. A conversion judgment was entered against plaintiffs for \$423,000, but Centipede and plaintiffs entered into a release agreement ultimately settling the case for \$120,000, which plaintiff Slifco paid on behalf of both parties. Plaintiffs filed this suit alleging that defendants committed malpractice. The trial court found that substitute counsel in the first case eventually raised the legal issues that plaintiffs claimed defendants had originally neglected,

so plaintiffs' grounds for malpractice were questionable. However, the trial court based its ultimate decision on plaintiffs' failure to present any evidence of damages.

To pursue a claim of legal malpractice, a plaintiff must show: "the existence of an attorney-client relationship; (2) negligence in the legal representation of the plaintiff; (3) that the negligence was the proximate cause of an injury; and (4) the fact and extent of the injury alleged." *Manzo v Petrella and Petrella & Assoc, PC*, 261 Mich App 705, 712; 683 NW2d 699 (2004). The trial court found that Slifco and Genesis together received a net economic benefit of about \$160,000 from the two contracts, notwithstanding any alleged errors by defendants, so plaintiffs failed to prove damages and defendants were entitled to summary disposition. Plaintiff Slifco argues however that the trial court erred when it pierced the corporate veil and determined that he and Genesis were a single entity for purposes of determining damages. We disagree. We review a decision to pierce the corporate veil de novo because it is a remedy that is equitable in nature. *Foodland Distributors v Al-Naimi*, 220 Mich App 453, 456; 559 NW2d 379 (1996).

Even when a corporation has only one shareholder, the corporation is treated as a separate entity from that individual shareholder. *Rymal v Baergen*, 262 Mich App 274, 293; 686 NW2d 241 (2004). "This presumption, often referred to as a 'corporate veil,' may be pierced only where an otherwise separate corporate existence has been used to 'subvert justice or cause a result that [is] contrary to some other clearly overriding public policy.'" *Seasword v Hilti, Inc (After Remand)*, 449 Mich 542, 548; 537 NW2d 221 (1995), quoting *Wells v Firestone Tire and Rubber Co*, 421 Mich 641, 650; 364 NW2d 670 (1984) (transposition in original). "Disregard of the corporate form rests on notions of equity, whether an action is at law or one for equity, and is made in light of the entire spectrum of relevant evidence in a particular case." *Regan v Carrigan*, 194 Mich App 35, 39; 486 NW2d 57 (1992).

In this case, there was evidence to support the trial court treating Genesis and Slifco as a single entity for purposes of calculating damages. Slifco was the sole shareholder in Genesis. The contract in the underlying case was not made between Genesis and Centipede, but between Centipede and Genesis Seven Crushed Concrete, a fictitious entity. Slifco ignored corporate forms when the contract was drafted. Slifco signed the contract as the president of the fictitious entity so Slifco could personally receive the benefits of the contract and be held personally liable on the contract. Slifco deposited the \$136,000 into Genesis' bank account and further injected himself into the matter by requesting a separate check to be written to him personally for \$20,000. Additionally, in the settlement and release agreement, Genesis VII was defined as including the corporation, Slifco, and Slifco's wife, which again shows how Slifco treated Genesis and himself as a single entity. The settlement agreement also releases Slifco from liability while obligating Genesis to pay the settlement amount of \$120,000. Nevertheless, Slifco personally paid the settlement and included that payment as his personal damages. Based on the above, Slifco treated Genesis as a mere instrumentality and failed to maintain corporate forms when contracting with Centipede. See *Rymal, supra*.

Additionally, it would be unjust to allow Slifco to treat its settlement obligation as damages while allowing Genesis to retain all the money it received for the sale of the concrete. The fact is that Slifco sold the same concrete to two different parties. He first sold the concrete to Centipede under the name Genesis Seven Crushed Concrete for a total of \$156,000, which Slifco divided between Genesis and himself. Then, acting on behalf of Genesis, he sold the concrete again to a different company for forgiveness of a debt of over \$100,000. Genesis

received \$136,000 as a result of the contract with Centipede and agreed to pay \$120,000 to settle the Centipede suit. Slifco claims that his payment of the \$120,000 settlement damaged him, even though Genesis still retained the \$136,000 in proceeds from the original contract. Accepting this argument would permit Slifco and his company collectively to reap a \$120,000 windfall for abusing Genesis' corporate form. Therefore, we agree that it was equitable for the trial court to treat Slifco and Genesis as a single entity for the purpose of calculating possible damages.

Slifco and Genesis received \$156,000 from Centipede on the contract. While things at one point looked dire for plaintiffs, they ended up settling the case for \$120,000, which resulted in a net benefit to them. While only moderately relevant, plaintiffs also received forgiveness of a debt valued at well over \$100,000 for reselling the concrete to the second purchaser. Because Slifco only claims negligence in defendants' representation, attorney fees from the underlying action are not recoverable. *G & D Co v Durand Milling Co, Inc*, 67 Mich App 253, 259-260; 240 NW2d 765 (1976). Accordingly, the trial court did not err in granting summary disposition to defendants because plaintiffs failed to provide any evidence of damages. Because plaintiffs' claim lacked factual support, the trial court correctly granted summary disposition and plaintiff Slifco's collateral estoppel arguments are moot.

Affirmed.

/s/ Bill Schuette  
/s/ David H. Sawyer  
/s/ Peter D. O'Connell