RENDERED: NOVEMBER 20, 2026; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2025-CA-0348-MR

MARTY NILEST AND MATT NILEST — APPELLANTS

v.

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE SARAH E. CLAY, JUDGE
ACTION NO. 17-CI-002319

ROMAN KUSYO AND NATALIE KUSYO — APPELLEES

OPINION
REVERSING

** ** ** ** **

BEFORE: ACREE, EASTON, AND TAYLOR, JUDGES.

ACREE, JUDGE: Marty and Matt Nilest appeal the Jefferson Circuit Court's summary judgment, piercing the Nilests' limited liability company's veil resulting in their personal liability. Because the trial court failed to apply Kentucky Revised Statute (KRS) 275.185(4), we reverse.

This Court previously set out the history of this case in *All That N More, LLC v. Kusyo*, No. 2019-CA-0928-MR, 2021 WL 1240799 (Ky. App. Apr. 2, 2021) (*Kusyo* I). In *Kusyo* I, we affirmed the trial court's entry of default judgment against the limited liability company but remanded for a re-calculation of damages.

However, the Kusyos also amended their complaint after remand, naming the Nilests individually, and seeking to pierce the limited liability company's veil. The Kusyos moved for summary judgment on that issue.

The trial court granted summary judgment. This appeal followed.

"Because summary judgments involve no fact finding, this Court will review the circuit court's decision *de novo.*" *Associated Ins. Service, Inc. v. Garcia*, 307 S.W.3d 58, 61 (Ky. 2010).

As in prior cases, the parties and the trial court presumed without deciding that a limited liability company's veil can be pierced in similar fashion to a corporation's veil piercing. *See, e.g.*, *Tavadia v. Mitchell*, 564 S.W.3d 322, 328 (Ky. App. 2018) (citation omitted). *See also Lummus Corporation v. Lighthouse Transportation Services, LLC*, ___ S.W.3d ____, 2026 WL 1189933 (Ky. App. May 1, 2026) (discretionary review pending) (concluding the LLC veil could be

pierced).[1] The Nilests focus on the trial court's analysis of the veil-piercing factors.

"A successful veil-piercing claim requires both this element of domination and circumstances in which continued recognition of the corporation as a separate entity would sanction a fraud or promote injustice." *Inter-Tel Techs., Inc. v. Linn Station Properties, LLC*, 360 S.W.3d 152, 155 (Ky. 2012). The trial court applied *Inter-Tel* to conclude the first element of veil piercing–domination–was satisfied. A significant fact upon which the court based its decision was the Nilests failure to follow corporate formalities. (Record (R.) 1393). That is an appropriate factor in determining whether to pierce an entity created pursuant to KRS Chapter 271B. *Inter-Tel*, 360 S.W.3d at 163.

But the Nilests operate their business as a limited liability company created pursuant to KRS 275.001 *et seq.* That chapter includes KRS 275.185 that sets record-keeping requirements of limited liability company members, part of their obligation to observe formalities of creation and continued operation. Notwithstanding that obligation, the statute also includes the following protection for members from personal liability: "Failure of the limited liability company to keep or maintain any of the records or information required pursuant to this section

[1] As described in *Lummus*, the Supreme Court has not affirmatively decided the issue of limited liability company's veil piercing but may do so with its decision to grant or deny discretionary review. Whether to hold this case in abeyance until then is a decision for the trial court.

shall not be grounds for imposing liability on any member or manager for the debts and obligations of the limited liability company." KRS 275.185(4).

As discussed in the not-yet-final *Lummus Corporation v. Lighthouse Transportation Services, LLC*, the legislature added language to KRS Chapter 275 in 2010 generally eliminating the liability protection "of a member, manager, employee, or agent of a limited liability company for his or her own negligence, wrongful acts, or misconduct." 2010 Kentucky Laws ch. 133, § 31 (S.B. 150) (codified as KRS 275.150(3)). However, the legislature did not eliminate or alter KRS 275.185(4), which is unchanged since its original adoption. 1994 Kentucky Laws ch. 389, § 37 (S.B. 184).

Although the trial court's summary judgment itself notes that the Nilests "claim . . . limited liability companies are not required to follow these formalities[,]" (R. 1391), it is clear the court failed to consider KRS 275.185(4) when determining whether, as a matter of law, the veil of the limited liability company's existence could be pierced. That was error.

We must reverse the summary judgment. Whether to re-analyze the Kusyos' motion for summary judgment in the context of KRS 275.185(4) or to proceed otherwise is a prerogative of the trial court.

ALL CONCUR.

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