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Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-001159-MR

REDNOUR PROPERTIES, LLC;
REDNOUR BLAKE, LLC; AND
RITCHIE R. REDNOUR II — APPELLANTS

v. — APPEAL FROM CLARK CIRCUIT COURT
HONORABLE JEAN CHENAULT LOGUE, JUDGE
ACTION NO. 08-CI-00373

SPANGLER ROOF SERVICES, LLC — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: LAMBERT AND STUMBO, JUDGES; SHAKE,[1] SENIOR JUDGE.

LAMBERT, JUDGE: Rednour Properties, LLC; Rednour Blake, LLC; and Ritchie R. Rednour II have appealed from the Clark Circuit Court's opinion, order, and

[1] Senior Judge Ann O'Malley Shake sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

judgment entered May 20, 2009. That order awarded damages, interest, and attorney fees related to their failure to pay an outstanding balance due pursuant to several change orders to a contract with Spangler Roof Services, LLC, for roof and gutter replacement in an apartment complex. The parties also contest the circuit court's failure to dismiss Ritchie Rednour as a defendant to the action. Having carefully reviewed the record, the parties' briefs, and the applicable law, we affirm the judgment on appeal.

Spangler Roof Services, LLC, is a limited liability company in the business of commercial and residential roofing and guttering. Charles E. Spangler Jr. is a commercial and residential contractor, and he is the owner and registered agent of Spangler Roof. Richie R. Rednour II is self-employed in the real estate business and owns several businesses related to multi-family housing. As pertaining to this case, Rednour is the owner and registered agent of Rednour Properties, LLC, and Rednour Blake, LLC. Rednour is the sole member of both limited liability companies. On June 6, 2007, Rednour Blake purchased Hillcrest Manor Apartments, an apartment complex located at 250 Oxford Drive in Winchester, Kentucky.[2] Rednour Properties manages Hillcrest Manor. Darren McClane is the project supervisor for Rednour Properties, and he handles crew members and contractors for renovation projects.

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[2] On September 20, 2007, Rednour Blake conveyed the Hillcrest Manor Apartments property to a subsidiary, 250 Oxford Drive, LLC. Rednour signed the deed for the grantor and the grantee, as the member and manager of Rednour Blake, on behalf of both Rednour Blake and 250 Oxford Drive.

Sometime before July 11, 2007, McClane contacted Spangler Roof seeking an estimate for roofing and gutter repairs to five buildings at Hillcrest Manor. Those buildings included the office, the pump house, and three residential buildings containing thirty-two to thirty-six units. The lower portions of the buildings were built of brick, while the upper levels were finished with mansard-style roofing. McClane met with Spangler at the Hillcrest Manor property, and Spangler Roof prepared and submitted a bid, which was accepted. McClane, Spangler, and Rednour met again on July 12, 2007, at which time Rednour, as general/owner, signed a contract prepared by Spangler between Rednour Properties and Spangler Roof setting out the agreement for the requested repairs. The repairs included removing existing roofing material and shingles, installing metal roofing panels to the upper sides of the buildings, installing a metal wrap to all wood surfaces above the brick levels, and installing gutters and downspouts. The total contract price equaled $110,000.00 and was to be paid in installments as follows:

> $27,500.00 at completion of first building. As well as $27,500.00 at completion of pump house and office building[,] $27,500.00 at completion of third building, $27,500.00 at completion of final building. As a bonus Owner (Rednour) agrees to pay an additional $12,500.00 if project to be completed within (30) business days, with the exception of delivery dates of material as well as adverse weather conditions. If in the advent of such Rednour will extend date day for day.

The anticipated start date was listed as approximately July 25, 2007, and the anticipated completion date was September 7, 2007. Invoices attached to and

incorporated in the contract detail the charges for material and labor for each building.

In addition, the contract included two pages of terms and conditions that Rednour initialed. These pages included sixteen numbered paragraphs, which addressed the scope of work, start and completion date, changes in the scope of work, payment, and default. The terms addressing payment and default (Paragraphs 5 and 14, respectively) provide that in the event of a lack of payment or other default, the owner agrees to pay a percentage of the amount owed as a late fee, a late charge of $30.00 per day until the amount is paid, as well as interest at a rate of 12.5% per month. The default condition specifically provides for payment of attorney fees and costs incurred by the contractor. Paragraph 8 permits changes in the scope of work. That paragraph states, in pertinent part: "Owner may, without invalidating this Contract, make changes to the Scope of Work, including additions, deletions and revisions to the Invoice, provided Owner and Contractor agree upon such changes and execute a written Change Order evidencing their agreement."

During the course of the project, the parties entered into several change orders. The first one, dated August 12, 2007, was for extra rolls of metal to correct a void in the facial board on four of the five buildings. The price for the material equaled $8,138.41, and Spangler did not charge for the associated labor. The second change order, dated August 20, 2007, was for the installation of new drip edges and caps for the third floor windows at a cost of $8,175.00. The third

one, dated January 2, 2008, called for the installation of metal wraps on the first and second floor window frames as well as on the door and sliding door frames. The price for this change order was $16,216.57. The parties also completed an additional work authorization form dated November 26, 2007, which was essentially for the same work as the third change order. The change order forms provided for a "25% late fee after 3 days late, 1.5% interest on balances over 30 days."

Unfortunately, problems arose between the parties concerning the repair work and payment. Rednour and McClane, who was on-site on a daily basis, complained about the quality and completion of the work. Complaints included the use of screws in the gutters and downspouts, the failure to wrap fifty windows, the use of the wrong color downspout, and the lack of a drip edge on one building. Spangler, on the other hand, maintained that he was not paid pursuant to the terms of the contract, which called for four $27,500.00 installment payments, but rather received multiple checks for varying amounts of money, all less than $27,500.00. Spangler also maintained that he was not being paid upon completion of each building, despite providing notice of substantial completion to Rednour. Vendor transaction listing forms from Rednour Properties show that a total of twelve checks were issued to Spangler Roof and ABC Supply Co., Inc., (the company supplying the materials for the project) or to Spangler Roof for a total amount of $110,952.02. The checks issued to both Spangler roof and ABC Supply are as follows:

August 14, 2007	$10,000.00
August 28, 2007	$10,000.00
September 5, 2007	$6,578.35
September 26, 2007	$20,000.00
October 3, 2007	$11,578.75
November 5, 2007	$19,078.35

The checks issued to Spangler Roof are as follows:

August 6, 2007	$5,000.00
October 22, 2007	$7,500.00
October 29, 2007	$5,000.00
January 15, 2008	$3,000.00
January 18, 2008	$3,000.00
January 21, 2008	$10,216.57

In April 2008, Spangler notified Rednour Properties via letter that Spangler Roof had completed the project at Hillcrest Manor on April 14, 2008, and requested payment of the balance due in the amount of $31,577.96. A series of correspondence began between Spangler and McClane in May, which culminated in the filing of a mechanic's lien on the property by Spangler Roof on May 30, 2008. The mechanic's lien listed $36,025.75 as the amount due for labor, materials, and supplies furnished for the project at the property. Additionally, ABC Supply filed a mechanic's lien against the property, stating it was due the sum of $44,201.47 for material provided for the project at Hillcrest Manor.

On May 30, 2008, Spangler Roof, through its registered agent Charles Spangler, filed suit against Rednour Properties, Rednour Blake, and Ritchie Rednour (the defendants), seeking the past due amount of $36,025.75, late fees, interest, and attorney fees due to the failure to honor their obligation under the contract. The defendants answered the complaint and filed a counterclaim, stating

that Spangler Roof failed to complete the project, failed to pay bills for materials used in the project, and refused to complete the work. In the answer to the counterclaim, Spangler Roof indicated that the amount it claimed had increased to $76,486.28, including attorney fees, late fees, and interest. The parties' attempt to mediate the claim proved to be unsuccessful, and the matter was eventually heard by the court in a bench trial. By the time Spangler Roof filed its pre-trial memorandum in March 2009, the amount claimed as damages had increased to $199,548.01, based upon additional late fees and interest.

Prior to trial, the defendants filed a motion seeking several rulings from the circuit court. First, the defendants moved to dismiss Ritchie Rednour and Rednour Blake as defendants. They stated that Spangler Roof did not allege any individual liability on Rednour's part and that he was not a party to the contract. Regarding Rednour Blake, the defendants cited a lack of privity between that company and Spangler Roof, as the contract was between Spangler Roof and Rednour Properties. The defendants also stated that Rednour Blake no longer held title to the property since it had been transferred to 250 Oxford Drive, LLC. Second, the defendants moved for a finding that the contract was unconscionable as one-sided, oppressive, and unfairly surprising. Third, the defendants moved for summary judgment or dismissal for failure to state a claim upon which relief could be granted, arguing that the funds claimed should have been paid to ABC Supply. Finally, the defendants moved to dismiss for failure to name a necessary party, as

250 Oxford Drive, LLC had been the owner of the property since September 2007. The circuit court opted to rule on the motions once it heard testimony.

The matter proceeded to a bench trial on May 11, 2009. At the conclusion of the trial, the circuit court issued an oral ruling from the bench in favor of Spangler Roof, followed by a written opinion, order, and judgment, in which it set forth its findings of fact and conclusions of law as follows:

> 1. The Court finds that the parties did, in fact, enter into a contract wherein the Plaintiff on behalf of Spangler Roofing, LLC and Ritchie Rednour, II individually as well as on behalf of Rednour Properties, LLC and Rednour Blake, LLC contracted for improvements to be made by Spangler Roofing, LLC on properties owned by the Defendant at Hillcrest Manor Apartments in Winchester, Kentucky.
>
> 2. The Court further finds that the Plaintiff made the improvements as contracted for free of any defects as alleged by the Defendants. Further, the Court finds that the Plaintiff did substantially complete the work and improvements contracted for in accordance with the contract.
>
> 3. Based upon the testimony of the Plaintiff, which the Court finds to be credible, the Court finds that the third floor windows of Hillcrest Manor Apartments were installed by the property owner after the windows had previously been wrapped by the Plaintiff. The Court cannot and does not find that there were any defects in the workmanship performed by the Plaintiff.
>
> 4. Upon review of the Plaintiff's Exhibit 19, a video tape taken by one of the Defendant's own witnesses, the Court does make the finding that the drip edge does exist and therefore, this allegation by the Defendant is found to be meritless.

5. The Court further finds that the screws in the downspouts were not a substantial violation of the duty of the Plaintiff to perform under the contract. Further, based upon the testimony of the Plaintiff, it is reasonable to believe that the Defendant did request screws for ease of cleaning the downspouts for purposes of maintenance.

6. The Court further finds that the original contract entered into between the Plaintiff and Defendant provided for the work to be done and completed and the same was accomplished. The Defendants have alleged and the Court agrees that the original terms of the agreement have been fulfilled by both parties.

7. The controversy in this lawsuit involves the three change orders which were Exhibits 7, 8 and 9 respectively for the Plaintiff. Upon examination of the Defendant in his testimony, the Defendant acknowledged that as each change order was presented, he agreed to the changes as reflected in and pursuant to the change order Exhibits. Accordingly, the Court makes a specific finding that the Defendant did, in fact, agree to each and every change order and thus, is obligated both jointly and severally as an individual and a corporation, for the amounts due therein on those change orders. The Court finds that the Defendant is liable to the Plaintiff for $8,138.41 due to the first change order with invoice number 1012590 dated August 12, 2007. The Court further finds that the Defendant is liable to the Plaintiff for the second change order with invoice number 1012594 dated August 24, 2007 in the amount of $8,175.00. The Court further finds that the Defendant is liable to the Plaintiff for the third change order with invoice number 10125120 with the date of January 2, 2008 in the amount of $16,216.57. These three change orders total $32,529.98.

8. The Court finds that the Defendant is liable jointly and severally both personally and as an officer through his corporations. The Court further finds that the change orders constituted a modification from the terms for penalties and late fees under the original contract and the change order language at the bottom of each change

order regarding 25% late fee after three days late and 1.5% interest on balances over thirty days should supersede the original penalty and late fee terms from the original contract introduced as Plaintiff's Exhibit 1.

9. Accordingly, the 25% late fee for the $32,529.98 outstanding balance owed by the Defendant to the Plaintiff results in a late fee penalty of $8,132.50. The Court then takes this amount and adds to it a twelve month period at 1.5% interest per month on the outstanding balance owed for a total amount owed by Defendant to the Plaintiff of $48,531.83.

10. Accordingly, the Court awards a judgment to the Plaintiff against the Defendant in the full sum amount of $48,531.83 as of May 11, 2009. The amount shall bear interest at the legal rate until paid in full. Due to the fact that ABC Supply, Inc. has placed a Mechanic's Lien for material provided to the Plaintiff for the work performed upon the Defendant's property, the Court Orders that the full sum awarded to the Plaintiff be made out in a check payable to both the Plaintiff as well as ABC Supply, Inc. jointly.

11. The Court also finds that it is reasonable to assess attorney fees against the Defendant for unnecessary delay in the payment of the amounts the Court finds were due and rightfully owing to the Plaintiff. Accordingly, the reasonable attorney fees as demonstrated at Trial that Plaintiff has incurred in the amount of $15,000.00 shall be and is hereby awarded to counsel for the Plaintiff in the form of an additional Judgment with interest at the rate of 12% per annum until paid in full. Attorney for the Plaintiff may enforce the Judgment in his own name and the Defendant is likewise Ordered to pay to the attorney for Plaintiff $15,000.00 in attorney fees awarded as a Judgment as of May 11, 2009 with interest at 12% per annum until paid in full.

12. This is a final and appealable Order and Judgment and there is no just reason for delay of its entry.

This appeal by Rednour Properties, Rednour Blake, and Ritchie Rednour (the appellants) follows.[3]

On appeal, the appellants raise three claims of error: 1) that the circuit court erred in failing to dismiss Ritchie Rednour as a defendant; 2) that the circuit court erred by finding that Spangler Roof substantially performed its duties under the contract; and 3) that the circuit court erred by awarding late fees, interest, and attorney fees.

Because this matter was tried without a jury, Kentucky Rules of Civil Procedure (CR) 52.01 applies to our review:

> In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the fact specifically and state separately its conclusions of law thereon and render an appropriate judgment[.] . . . Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. . . .

"On appeal, if a trial court's findings are supported by substantial evidence, those findings will be upheld as not being clearly erroneous." *Waters v. City of Pioneer Village*, 299 S.W.3d 278, 280 (Ky. App. 2009). "Substantial evidence is evidence, when taken alone or in light of all the evidence, which has sufficient probative value to induce conviction in the mind of a reasonable person." *Hunter v. Hunter*, 127 S.W.3d 656, 659 (Ky. App. 2003). "With regard to the trial court's

[3] This appeal was placed into abeyance on March 24, 2010, when Rednour filed a voluntary petition for bankruptcy pursuant to Chapter 7 of the U.S. Bankruptcy Code. The matter was returned to the active docket on August 13, 2010, upon discharge by the bankruptcy court.

application of law to those facts, this Court will engage in a *de novo* review." *Waters*, 299 S.W.3d at 280 (internal quotations, brackets, and citation omitted).

The appellants' first argument addresses the circuit court's decision to deny their motion to dismiss Ritchie Rednour as a defendant to the action. In the written judgment, the circuit court found Rednour entered into the contract individually as well as on behalf of Rednour Properties and Rednour Blake. The appellants argue that pursuant to both statutory and case law, an officer of a corporation cannot be held individually responsible for a contract made as an agent of the corporation when the officer is acting within the scope of his or her employment as an officer. On the other hand, Spangler Roof contends that the corporate veil in this case should be pierced as there is no distinction between Rednour and the LLCs he owned, giving Spangler no reason to distinguish between the LLCs and him as an individual.

In KRS 275.150, the General Assembly set forth immunity rules for members of limited liability companies, stating, in part, as follows:

> [N]o member, manager, employee, or agent of a limited liability company, including a professional limited liability company, shall be personally liable by reason of being a member, manager, employee, or agent of the limited liability company, under a judgment, decree, or order of a court, agency, or tribunal of any type, or in any other manner, in this or any other state, or on any other basis, for a debt, obligation, or liability of the limited liability company, whether arising in contract, tort, or otherwise.

KRS 275.150(1).

The appellants cite the above statute as well as *Potter v. Chaney*, 290 S.W.2d 44 (Ky. 1956), and *Sudamax Industria e Comercio de Cigarros, LTDA v. Buttes & Ashes, Inc.*, 516 F.Supp.2d 841 (W.D.Ky. 2007), in support of their argument that Rednour cannot be held personally liable. In *Potter*, the former Court of Appeals addressed this issue in the context of an action for a debt. The Court stated generally that it is "fundamental that an officer of a corporation will not be individually bound when contracting as an agent of that corporation within the scope of his employment." *Potter*, 290 S.W.2d at 46. Furthermore, "[a]fter the principal is disclosed, the agent is not liable, generally speaking, for his own authorized acts, or for the subsequent dealings between the third person and the principal." *Id*. Citing the Restatement of the Law of Agency, the Court then stated that "[a] principal is disclosed if at the time of a transaction conducted by the agent, the other party thereto has notice that the agent is acting for a principal and of the principal's identity." *Potter*, 290 S.W.2d at 46 (internal quotation marks omitted). Similarly, the appellants cite *Sudamax* for the proposition that under Kentucky law, "an agent is not personally liable for acts performed within the scope of his agency on behalf of a disclosed principal." *Sudamax*, 516 F.Supp.2d at 846.

As related to the present matter, the appellants argue the existence of the principal (Rednour Properties, LLC) was made clear in the contract, which Spangler Roof prepared and completed, and in Spangler's May 6th letter to McClane wherein Spangler stated that he planned to sue Rednour Properties.

Because Rednour's acts, including signing the contract, were made only as a member of the LLC, the appellants contend that he cannot be held personally liable.

Spangler Roof, in turn, asserts that the corporate veil should be pierced in this case under the alter ego theory based upon fraud or injustice, citing *Sudamax*, *supra*, as well as *White v. Winchester Land Development Corp.*, 584 S.W.2d 56 (Ky. App. 1979). In *White*, this Court identified the three basic theories used to pierce the corporate veil and hold members or shareholders responsible for corporate liabilities. Those theories are the instrumentality theory, the alter ego theory (as argued in the present case), and the equity formulation. *White*, 584 S.W.2d at 61. In a footnote, the Court noted that "the cases that apply these tests show that the courts have been more willing to 'pierce the corporate veil' when the defendant is a corporation that owns some subsidiary, rather than an individual, controlling shareholder." *Id*. at 61 n.6.

In *Sudamax*, the United States District Court for the Western District of Kentucky noted the requirement that a plaintiff must plead the theory of liability that the corporate veil should be pierced in the complaint, and then relied extensively on this Court's opinion in *White* regarding the elements of this theory:

> Courts are generally reluctant to disregard the corporate entity. *Holsclaw v. Kenilworth Ins. Co.*, 644 S.W.2d 353 (Ky. App. 1982); *United States v. WRW Corp.*, 778 F.Supp. 919, 923 (E.D.Ky. 1991). The corporate veil should not be pierced unless there is (1) "such a unity of ownership and interest" that the separate personalities of the corporation and its owner cease to exist, and (2) "the

> facts are such that an adherence to the normal attributes ... of separate corporate existence would sanction a fraud or promote injustice." *White v. Winchester Land Development Corp.*, 584 S.W.2d 56, 61-62 (Ky.App.1979). *See also* 1 William M. Fletcher, Fletcher Cyclopedia of the Law of Private Corporations, § 41.30 (perm. ed. rev.vol. 1990). "[T]he first element focuses on the relationship between the corporation and the owners or other corporate actors, while the second element concerns the relationship between the corporation and the plaintiff." *Thomas v. Brooks*, 2007 WL 1378510, *3 (Ky. App. May 11, 2007). In deciding whether to pierce the veil, courts have identified several factors bearing on the first element: "(1) undercapitalization; (2) a failure to observe the formalities of corporate existence; (3) nonpayment or overpayment of dividends; (4) a siphoning off of funds by the dominant shareholder(s); and (5) the majority shareholders having guaranteed corporate liabilities in their individual capacities." *White*, 584 S.W.2d at 62. "No single factor is dispositive, and generally several must be present to justify piercing." *Thomas*, 2007 WL 1378510, *3.

Sudamax, 516 F.Supp.2d at 847-48.

In support of its argument that the corporate veil should be pierced, Spangler Roof points out that Rednour Blake, a corporate entity owned by Ritchie Rednour, transferred its ownership of the Hillcrest Manor to its own subsidiary, 250 Oxford Drive. Further, it points to testimony at trial showing a lack of distinction between the various LLCs, which Rednour owned, and Ritchie Rednour the individual. The contract at issue listed Rednour Properties as the owner of the property, although it was actually owned by Rednour Blake at the time the contract was executed. Finally, Spangler Roof states that all three of the limited liability companies were

owned by Rednour and that he signed the contract without specifying that he was acting in a corporate capacity.

In their reply brief, the appellants contend that Spangler Roof did not attempt to prove or establish any evidence of fraud or injustice at the trial, noting that the contract, which was prepared by Spangler Roof, lists Rednour Properties as the other contracting party. They also contend that merely naming Rednour as a defendant was not enough to plead the theory of liability as required.

Based upon our review of the circuit court's ruling at the conclusion of the trial as well as its finding in the written judgment, we hold that there is substantial evidence to support the circuit court's decision to pierce the corporate veil in this action. While the record establishes the corporate existence of the entities at issue (Rednour Blake and Rednour Properties, which both list Rednour as the registered agent), it is obvious that these entities were "dummy" corporations designed to protect Rednour from personal liability. Rednour is the sole member and agent of those companies as well as several others, at least one of which is a subsidiary of another LLC, and Rednour admits to having set up the LLCs for tax purposes. Under these circumstances, we are unable to discern any difference between Rednour and his various LLCs. Accordingly, we must hold that the circuit court did not commit any error when it held Ritchie Rednour individually liable for the corporate debts and declined to dismiss him as a defendant.

For their next argument, the appellants assert that the circuit court erred in finding that Spangler Roof had substantially performed under the contract. They

argue that under the scope of work provision of the contract ("Contractor shall furnish all labor and materials required for repair/installation of estimated project at the location"), their payment was contingent upon Spangler Roof's performance of the work and payment of the materials needed to complete the project. The appellants contend that the greater weight of the evidence presented at trial demonstrates that Spangler Roof did not substantially perform the contract. Furthermore, they argue that Spangler Roof failed to pay ABC Supply for the materials used for the project. Spangler Roof points out that it is within the discretion of the trial court to determine the credibility of the witnesses and that the circuit court in this case properly considered the evidence and determined that Spangler Roof had substantially performed under the contract and change orders.

In support of their argument, the appellants cite to *West Kentucky Coal Co. v. Nourse*, 320 S.W.2d 311 (Ky. 1959), a case involving specific performance of a contract, we presume for the "clean hands" maxim that "before one may obtain the benefits the contract confers upon him, he himself must perform the obligation which is imposed upon him . . . ." *Id*. at 314. In other words, the appellants contend that they do not have pay under the contract until Spangler Roof pays ABC Supply for the materials it used.

In the present case, the circuit court found that Spangler Roof substantially completed the work contracted for under the original contract without any defects, and we hold that this finding is not clearly erroneous. The record supports the court's specific findings that the windows at issue were replaced by the property

owner after they had been wrapped, that the drip edge existed, and that the use of screws to secure the downspouts was not a substantial violation of the contract. We note for the record that the circuit court found that both parties had fulfilled their respective obligations under the original contract, but that the appellants had not paid for work completed under the change orders.

We specifically disagree with the appellants' argument that they are under no obligation to pay pursuant to the contract until Spangler Roof paid ABC Supply for the materials it used to complete the repairs. The provision of the contract merely states that Spangler Roof must furnish all materials used, which it did.

For their last argument, the appellants contest the circuit court's imposition of late fees, interest, and attorney fees on the amount of the judgment.

We shall first address the circuit court's imposition of late fees and interest. The appellants assert that they could not be bound by the terms of the change orders upon which the circuit court based the award of late fees and interest as the change orders were not executed by both parties. They cite to Paragraph 8 of the contract terms and conditions, which states that the change orders must be executed by both parties. However, the circuit court specifically found that Rednour agreed to each change order, and the record of his testimony on direct examination at trial fully supports this finding. Therefore, we find no merit in this argument. Furthermore, we recognize that had the circuit court opted to rely on the terms for penalties and late fees in the original contract, the amount awarded would

have been much higher, as those provisions also included a $30.00 per day late fee and called for an interest rate of 12.5% per month until the funds were paid in full.

Next, and finally, the appellants contend that the circuit court improperly awarded $15,000.00 in attorney fees because the change orders did not authorize the award of such fees and because the amount of the fee was based on the unsupported testimony of Charles Spangler. Spangler Roof points out that the contract itself called for attorney fees to be paid by the defaulting party in Paragraph 14 and that the appellants failed to name the attorney as a party to the appeal as required.

We agree with Spangler Roof that the appellants were required to name Spangler Roof's counsel as a party to the appeal in order to contest the award of attorney fees. In the judgment, the circuit court specifically awarded the $15,000.00 fee to counsel for Spangler Roof and permitted counsel to enforce the judgment in his own name. In *Knott v. Crown Colony Farm, Inc.*, 865 S.W.2d 326 (Ky. 1993), the Supreme Court of Kentucky addressed the issue of whether failure to name the attorney in a fee contest is fatal to the appeal. The Supreme Court ultimately held that the attorney need not be named as a necessary party on appeal "[a]bsent an award of fees to an attorney by judgment in his or her favor (thus allowing the attorney enforcement of the award by execution)[.]" *Id*. at 331. In the present case, the circuit court awarded the fee to the attorney, not the party, and allowed the attorney to execute the judgment in his own name. Therefore, counsel

for Spangler Roof was a necessary party to the appeal in order for the appellants to contest the award of attorney fees. Accordingly, we must affirm the award.

Even if the attorney had been named, we would nevertheless have upheld the award. The terms of the change orders did not mention attorney fees, meaning that the terms of the original contract permitting an award of fees were not negated. Furthermore, the amount awarded was based on Spangler's undisputed testimony and did not constitute an abuse of discretion. *See Giacalone v. Giacalone*, 876 S.W.2d 616, 620-21 (Ky. App. 1994) (holding that "the decision whether to award costs and attorney's fees to a party is within the sound discretion of the trial court and its decision will not be disturbed on appeal absent an abuse of discretion.").

For the foregoing reasons, the judgment of the Clark Circuit Court is affirmed.

STUMBO, JUDGE, CONCURS.

SHAKE, SENIOR JUDGE, DISSENTS AND FILES SEPARATE OPINION.

SHAKE, SENIOR JUDGE, DISSENTING: I disagree with the portion of the majority's opinion that addresses the trial court's disregard of the corporate status. Therefore, respectfully dissent.

Holding a shareholder liable for corporate debt is an extraordinary procedure. *Morgan v. O'Neil*, 652 S.W.2d 83, 85 (Ky. 1983). In this case, the contract was between Spangler Roof and Rednour Properties. By holding Ritchie

Rednour personally liable for the breach of contract and resulting debt, the trial court pierced the corporate veil. The court's order stated, in part:

> [T]he Court makes a specific finding that the Defendant did, in fact, agree to each and every change order and thus, is obligated to pay both jointly and severally as an individual and a corporation, for the amounts due therein on those change orders.

A corporate shareholder or officer's execution of a contract does not alone introduce personal liability. Instead, a shareholder or officer is shielded from personal liability arising from a contract where the officer was acting within his authority to bind the corporation. *Smith v. Isaacs*, 777 S.W.2d 912, 913 (Ky. 1989). Similarly, shareholders and officers are protected from liability arising from a corporate debt unless evidence justifies the trial court's piercing the corporate veil or unless there is a statute imposing liability for the debt. *Id.*

White v. Winchester Land Development Corp., 584 S.W.2d 56, 62 (Ky. App. 1979), instructs courts to disregard the corporate entity "reluctantly and cautiously[.]" Such precautions were not taken in this case. Piercing the corporate veil was not pled. The trial court did not articulate grounds to justify its action. No evidence of fraud exists in this case. Moreover, holding Rednour Blake, LLC liable is not supported by the facts. Spangler Roof had a contract with Rednour Properties, LLC, and must look to that corporate identity for what the trial court found to be unpaid amounts in the contract. Therefore, I would reverse the trial court's imposition of liability to Ritchie Rednour and Rednour Blake, LLC.

BRIEFS FOR APPELLANTS:

M. Alex Rowady
Winchester, Kentucky

BRIEF FOR APPELLEE:

Michael Davidson
Lexington, Kentucky