

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2006 CA 0039

ROBERT C. LEHMAN

VERSUS

LOUIS NORMAND, JR. AND MATTHEW NORMAND

Judgment Rendered: November 3, 2006

Appealed from the
22nd Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Case No. 2004-15575

The Honorable William J. Burris, Judge Presiding

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Louis J. Normand, Jr. and
Matthew Normand

BEFORE: KUHN, GAIDRY, AND WELCH, JJ.

GAIDRY, J.

In this case, the plaintiff appeals a trial court judgment granting defendants' exception of no cause of action and dismissing plaintiff's suit with prejudice. We reverse.

FACTS AND PROCEDURAL HISTORY

Plaintiff, Robert C. Lehman, filed suit on November 23, 2004, against Louis J. Normand, Jr. and Matthew Normand, asserting claims arising out of defendants' alleged breach of fiduciary duties owed to corporate shareholders. Lehman's claims involved two corporations: Diversified Group, Inc. d/b/a Classic Show Trucks ("Diversified"), and Royal One Equities, Inc. ("Royal One"). Lehman's petition alleges that Louis Normand created Diversified and together Lehman and Louis Normand created Royal One. Lehman further alleges that in consideration for his expertise and work contributed to the corporations, Louis Normand granted him twenty-five percent of the total stock of Diversified and forty-five percent of the total stock of Royal One. Lehman was initially involved in the day-to-day operations of both Diversified and Royal One, but he eventually discontinued this involvement. Lehman alleges that at the time he discontinued his involvement in the companies' daily operations, both companies held substantial assets and realized substantial profits from their operations. Once he stopped being involved in the daily operations of the businesses, Lehman alleges that Louis Normand and Matthew Normand began breaching their fiduciary obligations to the corporations by diverting business opportunities to alternative business entities, using the assets of both corporations for their own personal benefit, and transferring the assets of the corporations to themselves personally or to entities under their control.

On January 20, 2005, the defendants filed exceptions of lack of personal jurisdiction, improper service of process, and no cause of action. Lehman voluntarily dismissed his claims against Matthew Normand without prejudice. The crux of Louis Normand's argument on the exception of no cause of action was that Lehman's claims arose out of an agreement with the corporation, and that he had no cause of action against Louis Normand, as an officer of the corporation for a debt of the corporation unless he alleges sufficient facts to pierce the corporate veil. In opposition to the exception, Lehman argued that he was not attempting to pierce the corporate veil or seeking payment of a debt of the corporation. Rather he is pleading a cause of action against Louis Normand individually for his breach of his fiduciary obligations to the corporate shareholders because he plundered the corporations' assets and opportunities for his own personal interests. The court granted the exception of no cause of action, and Lehman was ordered to amend his petition to state a cause of action within fifteen days.

Lehman filed a First Supplemental and Amending Petition for Damages on March 31, 2005, in which he deleted all references to corporations and simply referred to Diversified and Royal One as "businesses" or "companies" and alleged the same basic actions by Louis Normand. Additionally, Lehman alleged that Louis Normand had recently dissolved Diversified and Royal One without notifying him and that neither entity is now in existence. He characterizes his claims in this petition as follows:

Petitioner submits that he has a personal action against defendant due to defendant's actions of fraud, deceit, theft, and breach of fiduciary duty; that petitioner and defendant are both residents of St. Tammany; and petitioner further pleads in the alternative that due to the circumstances between the parties, that plaintiff is entitled to pursue an action against defendant under the doctrine of unjust enrichment.

In response to Lehman's First Supplemental and Amending Petition, Louis Normand filed another exception of no cause of action, asserting that this petition still did not plead sufficient facts to pierce the corporate veil and sue him individually.

After a hearing, the court found that Lehman's petition did not state a cause of action, because it appeared that Lehman was seeking damages for Louis Normand's violation of the fiduciary duties he owed to the corporations in which Lehman was a shareholder, and such a claim should be filed as a shareholder derivative action, not a breach of contract or tort claim. The court also noted that Lehman had failed to state sufficient allegations to pierce the corporate veil.

Lehman appealed, alleging that the trial court erred in finding that he had failed to state a cause of action, that he had failed to state sufficient allegations to pierce the corporate veil, and that he was not entitled to proceed under the doctrine of unjust enrichment.

DISCUSSION

The function of an exception of no cause of action is to test the legal sufficiency of the petition by determining whether the law affords a remedy on the facts alleged in the pleading. *Everything on Wheels Subaru, Inc. v. Subaru South, Inc.*, 616 So.2d 1234, 1235 (La.1993). The only issue at the trial of the exception is whether, on the face of the petition, the plaintiff is legally entitled to seek relief. *Perere v. La. Television Broadcasting Corp.*, 97-2873 (La.App. 1st Cir.11/06/98), 721 So.2d 1075, 1077.

There is nothing anywhere in Lehman's First Supplemental and Amending Petition that alleges the existence of a corporation, Louis Normand's status as an officer of a corporation, or Lehman's status as a shareholder of a corporation. The trial court's finding on the exception of no

cause of action that “[i]t appears plaintiff is seeking damages for violation of fiduciary duties to corporations and plaintiff is a shareholder” and “[t]here are insufficient allegations to pierce the corporate veil” is clearly based on facts which are not found on the face of the First Supplemental and Amending Petition. This is an issue for a motion for summary judgment; the trial court clearly erred in granting Normand’s exception of no cause of action.

DECREE

The judgment of the trial court granting Louis Normand’s exception of no cause of action is reversed. All costs of this appeal are to be borne by Louis Normand.

REVERSED.