Cite as 2012 Ark. App. 610

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA11-1237

HARVEST CONSTRUCTION GENERAL CONTRACTING, INC., MATTHEW T. MABE, and LAURA MABE APPELLANTS	Opinion Delivered October 31, 2012
	APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT [NO. CV-2009-4068-6]
V.	HONORABLE MARK LINDSAY, JUDGE
LATCO CONSTRUCTION, INC. APPELLEE	AFFIRMED

ROBIN F. WYNNE, Judge

Harvest Construction General Contracting, Inc., Matthew T. Mabe, and Laura Mabe appeal from an order and judgment of the circuit court in which the court granted appellee Latco Construction, Inc.'s motion for sanctions, struck appellants' answers to appellee's original and amended complaints, and awarded damages to appellee in the amount of $84,552.53. In the order and judgment, the trial court also retained jurisdiction over the case to consider awards of attorney's fees and prejudgment interest. Appellants argue on appeal that the trial court lacked personal jurisdiction over Matthew T. Mabe and Laura Mabe and that the trial court abused its discretion by striking their answers. We affirm.

Harvest, a Kansas corporation, was hired by McCain Lodging to construct a Hilton Garden Inn in North Little Rock, Arkansas. Harvest subcontracted with Latco to provide framing work and structural components for the project. In February 2009, Harvest

determined that it could not complete the project and notified McCain, which terminated the contract between those two parties in March 2009. McCain paid Harvest $362,052.98 in February 2009, and Harvest returned the entire amount to McCain. Latco performed some of its work under the contract with Harvest and was partially paid by McCain following Harvest's default. Latco asserted that it was owed $16,000 for structural components and $58,512 under the framing subcontract with Harvest.

Pursuant to the parties' contract, the debt dispute was submitted to mediation and arbitration. A mediation was held in Missouri on August 24, 2009, and attended by Matthew T. Mabe as president of Harvest. An arbitration was held in Arkansas on November 2, 2009, and attended by Matthew T. Mabe as president of Harvest and Laura Mabe as secretary-treasurer of Harvest. On November 16, 2009, the arbitrator entered an award in favor of Latco in the amount of $84,552.53. On December 22, 2009, Latco filed a complaint in Washington County Circuit Court in which it sought an order confirming the arbitration award, plus attorney's fees and costs. Harvest was the only defendant named in the original complaint. Harvest dissolved on December 31, 2009.

Latco added the Mabes, who are residents of the State of Kansas, as additional defendants in an amended complaint filed on February 19, 2010. Latco added a second count in the amended complaint in which it alleged that Harvest was the alter ego of the Mabes. Latco further alleged that Harvest lost good standing with the Arkansas Secretary of State on May 1, 2009, when it failed to pay its franchise tax and that its corporate charter was revoked by the Arkansas Secretary of State on or about December 31, 2009. Latco alleged that the

actions of the Mabes in continuing to participate in the operation of Harvest after its loss of good standing and the revocation of its corporate charter resulted in their personal obligation for Harvest's debts.

Appellants filed an answer to the amended complaint in which they objected to the trial court's exercise of personal jurisdiction over the Mabes. The Mabes entered a limited appearance for the purpose of contesting personal jurisdiction. The Mabes filed a motion to dismiss on April 22, 2010, in which they stated that the trial court lacked personal jurisdiction over them, that Latco failed to state facts supporting its claim that they are personally liable for Harvest's debts, and that Latco failed to state facts supporting its claim that Harvest was their alter ego. Following a hearing on the motion to dismiss, the trial court entered an order on August 2, 2010, in which it granted the motion as to the allegation in the amended complaint that the Mabes were personally liable for the debts of Harvest and denied the motion as to the allegation in the amended complaint that Harvest operated as the alter ego of the Mabes. The order also gave Latco twenty days to further amend its complaint.

On August 5, 2010, Latco filed a second amended complaint in which it alleged additional facts to support its contention that Harvest operated as the alter ego of the Mabes. Appellants filed an answer to the second amended complaint in which they again alleged that the trial court lacked personal jurisdiction over the Mabes. The case was set for a jury trial on March 7, 2011, and the parties agreed that discovery was to be completed on or before February 1, 2011. Following several disputes between the parties regarding depositions and requests for production of documents, the trial court continued the jury trial until August 23,

2011, and the trial court further ordered that discovery be completed by August 1, 2011.

Latco propounded its first set of interrogatories and requests for production of documents on April 4, 2011. Appellants filed an answer to the amended complaint on April 12, 2011, which included a "counterclaim" in which appellants alleged that Latco had been paid for its work by McCain prior to demanding arbitration of its dispute with Harvest. Latco filed a motion to dismiss the counterclaim. Appellants filed a motion to stay these proceedings on April 28, 2011, pending the resolution of a suit they filed against McCain. Latco filed a motion for Rule 11 sanctions on May 6, 2011, in which it alleged that the counterclaim filed by appellants was an improper attempt to re-litigate the issues from the arbitration proceedings. After appellants failed to respond to Latco's discovery requests, Latco filed a motion to compel discovery on May 10, 2011. Following a hearing on various motions held on June 17, 2011, the trial court ordered, among other things, that appellants' counterclaim be dismissed and that appellants provide responses to Latco's discovery requests by June 24, 2011.

Appellants sent responses to Latco's discovery requests on June 24, 2011. After the responses were received, Latco filed a second motion to compel discovery and for sanctions in which it alleged that appellants failed to include certain financial documents it requested. Latco also filed a motion for sanctions following its receipt of appellants' second set of interrogatories and requests for production of documents (which were styled as the first set). Latco alleged in the motion that appellants were again requesting information the trial court had ruled was not relevant to the action. Appellants filed a motion to compel discovery on

July 28, 2011.

At the hearing on Latco's second motion to compel, appellants informed the trial court that they did not have the financial records sought by Latco. Latco's counsel informed the court that Matthew Mabe had not signed an authorization that would have allowed Latco to obtain financial records directly from the institution. The trial court determined, based on appellants' failure to produce the requested documents combined with their numerous previous efforts to delay and evade discovery, that appellants were not dealing with either the court or Latco in good faith. As a result, the trial court imposed sanctions under Arkansas Rule of Civil Procedure 37. The trial court struck appellants' answers to the original and amended complaints and granted a default judgment against appellants. On August 23, 2011, the trial court entered an order and judgment in which it struck appellants' answers and awarded judgment to Latco in the amount of $84,552.53. In the order, the trial court retained jurisdiction of the case pending Latco's filing of petitions for attorney's fees and prejudgment interest. This appeal followed.

Although the judgment on appeal is not final due to the outstanding issue of prejudgment interest, the appeal in this case may be heard because the order, in addition to awarding the judgment, strikes appellants' answers to the original and amended complaints. Appeal may be taken from an order which strikes out an answer, any part of an answer, or any pleading in an action. Ark. R. App. P.–Civ. 2(a)(4) (2012). Our supreme court has held that the specific provision allowing an appeal from an order striking an answer in Rule 2(a)(4) prevails over the more general provision in Arkansas Rule of Appellate Procedure–Civil

2(a)(1) allowing an appeal from a final order. *Arnold Fireworks Display, Inc. v. Schmidt*, 307 Ark. 316, 820 S.W.2d 444 (1991).

Appellants' first point on appeal is that Latco's amended complaint failed to establish personal jurisdiction over the Mabes. Their second point on appeal is that the trial court abused its discretion when it struck their answer due to discovery violations. We will first consider appellants' arguments regarding the sanctions imposed by the trial court.

The trial court struck appellants' answers pursuant to Arkansas Rule of Civil Procedure 37, which allows a circuit court to make such orders which are just when a party fails to obey a discovery order. Ark. R. Civ. P. 37(b)(2) (2012). Under the rule, a circuit court is permitted to enter an order striking out pleadings or parts thereof. Ark. R. Civ. P. 37(b)(2)(C). An order granting sanctions pursuant to Rule 37 is reviewed for abuse of discretion. *See Matthews v. Matthews*, 2009 Ark. App. 400, 322 S.W.3d 15.

We hold that the trial court did not abuse its discretion by striking appellants' answers. Latco filed suit to enforce an arbitration award against Harvest and later added the Mabes, who were the president and secretary-treasurer of Harvest, as individual defendants. The record reveals a pattern by appellants of attempting to delay and evade discovery in this matter. Every time Latco filed any type of discovery request, appellants sought a protective order and, if that was not granted, they filed another type of request that would allow them to avoid or delay giving discovery responses. They also made repeated efforts to collaterally attack the arbitration award, despite the circuit court's statements that this was not to be done. Finally, when trial on the matter was imminent, appellants admitted to the court that they did

not have possession of financial records sought by appellee, despite the fact that the documents had been requested by Latco much earlier, appellants had never previously indicated that they did not have the documents, and Matthew Mabe did not execute a document that would have allowed Latco to obtain the financial records directly from the institution. Given appellants' actions, the trial court acted within its discretion under Rule 37 when it struck their answers.

Our decision regarding the trial court's sanctions disposes of appellants' argument that Latco's complaint failed to establish personal jurisdiction over the Mabes. Striking appellants' answers placed them in a default position. In a default, all material allegations in the complaint are taken as true. *See Adams v. Moody*, 2009 Ark. App. 474, 324 S.W.3d 348. As a result, all of Latco's allegations regarding the Mabes' abuse of Harvest's corporate form to its injury are taken as true. This would allow the circuit court to pierce the corporate veil and reach the Mabes personally, as the one seeking to pierce the corporate veil and disregard the corporate entity must prove that the corporate form was abused to his injury. *See Bonds v. Hunt*, 2010 Ark. App. 415, 379 S.W.3d 57. Thus, with the corporate form discarded, the Mabes would be personally liable for the obligations of Harvest, including the arbitration award stemming from that contract.

It is not disputed that Harvest was subject to personal jurisdiction in an Arkansas court by virtue of its status as a party to a contract to build a hotel in Arkansas. The Mabes' objection to the trial court's exercise of personal jurisdiction over them rests solely on the protection offered to company officers by the existence of the corporate form. The piercing

of the corporate veil renders it unnecessary for us to consider appellants' arguments regarding personal jurisdiction.

Affirmed.

VAUGHT, C.J., and BROWN, J., agree.

Madison Law Firm, by: *Richard Christopher Madison*; *Armstrong Teasdale, LLP*, by: *Ricardo A. Kolster*, for appellant.

L. David Stubbs, for appellee.