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Clerk of the
Appellate Courts

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs February 1, 2023

RUBEN ESTRADA v. DJ EXTERIORS, LLC ET AL.

Appeal from the Circuit Court for Williamson County
No. 20-CV-255 Michael Binkley, Judge

No. M2022-01052-COA-R3-CV

KRISTI M. DAVIS, J., concurring in part and dissenting in part.

I concur in the majority's opinion regarding piercing the corporate veil and fraudulent conveyance. I disagree with the majority's opinion regarding punitive damages. The plaintiff's argument on this issue is certainly not robust, but I think the intention was simply to rely primarily on the argument regarding fraudulent conveyance to also support the claim for punitive damages. In other words, I read the plaintiff's brief as arguing that the evidence of an intentional transfer of money to the individual defendants supports both the claim of fraudulent conveyance and punitive damages. Regarding questions of waiver, we should not "exalt form over substance." *Powell v. Cmty. Health Sys., Inc.*, 312 S.W.3d 496, 511 (Tenn. 2010). Moreover, "the doctrine of waiver generally exists to prevent litigants from raising issues to which their opponents have no opportunity to respond." *Jackson v. Burrell*, No. W2018-00057-COA-R3-CV, 2019 WL 237347, at *7 (Tenn. Ct. App. Jan. 16, 2019) (Stafford, J., dissenting). Here, the defendants have been on notice for the entirety of this case that plaintiff seeks punitive damages. For these reasons, I would not consider the issue waived.

Moreover, this Court may, in the exercise of its discretionary authority, consider issues not otherwise presented for review when, inter alia, it serves "to prevent injury to the interests of the public[.]" Tenn. R. App. P. 13(b). Here, the majority opinion provides, essentially, that there is evidence suggesting defendants abused the corporate form and/or committed fraud. Under the circumstances, punitive damages are appropriate to consider given the "keen edge of the doctrine as an effective deterrent of truly reprehensible conduct." *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 (Tenn. 1992) (quoting *Tuttle v. Raymond*, 494 A.2d 1353, 1361 (Me. 1985)).

As to the substance of the issue, while I acknowledge the difference in the burden of proof required to substantiate a claim for fraudulent conveyance versus a claim for punitive damages, both claims can be proven by showing intentional conduct. It seems to

me that, the different burdens of proof notwithstanding, if there was sufficient evidence for the jury to decide whether the individual defendants acted with the actual intent to hinder, delay, or defraud the plaintiff, then there was sufficient evidence for the jury to decide whether the defendants acted intentionally, fraudulently, maliciously or recklessly. *Hodges*, 833 S.W.2d at 901. For this reason, I would reverse the trial court's decision on punitive damages, and so I respectfully dissent on this issue.

/s/ Kristi M. Davis

KRISTI M. DAVIS, JUDGE