

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

LAWRENCE DEFIORE and  
MICHAEL O'SHAUGHNESSY,

Plaintiffs,

v

Case No. 15-148336-CB  
Hon. Wendy Potts

ATTS & L, INC., a Michigan corporation,

Defendant.

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OPINION AND ORDER ON WRITTEN BRIEFS IN LIEU OF TRIAL

At a session of Court  
Held in Pontiac, Michigan

On

SEP 14 2016

This matter arose as the result of Plaintiffs' claims for breach of contract, common law and statutory conversion under MCL 600.2919a, and breach of contract—gift, which are all premised on an alleged gift of an interest in property. This matter now is before the Court on the parties' briefs in lieu of a bench trial. This case was scheduled for a non-jury trial on July 7, 2016 at 8:30 a.m. However, on June 29, 2016 the parties submitted a stipulation, pursuant to the final pretrial order, agreeing to have the matter decided by the Court on the written briefs in lieu of trial. Both parties submitted a brief in lieu of trial, and, as permitted by the Court Order of July 8, 2016, Plaintiff also submitted a response brief.

Plaintiff asserts that on November 6, 1998, Defendant ATTS & L, through James D. Ferns, III, gifted 3% to 2310 Cass Avenue, Detroit, Michigan to Plaintiff Michael J. O'Shaughnessy and gifted 2% of the same property to Plaintiff Lawrence Defiore as evidenced

by two exhibits attached to its brief. James D. Ferns, III subsequently died, and James Ferns, IV became the sole owner and shareholder of ATTS & L.

Exhibit A to Plaintiffs' Brief in Lieu of Trial states, in part, "I, JAMES D. FERNS DO HEREBY GIFT 3% OF MY PROPERTY LOCATED AT 2310 CASS AVE., DETROIT, MICHIGAN TO: MICHAEL O'SHAUGHNESSY VALUED IN THE AMOUNT OF \$18,000." Exhibit A is dated November 6, 1998 and signed by James D. Ferns. Exhibit B to Plaintiffs' Brief in Lieu of Trial states, in part, "I, JAMES D. FERNS DO HEREBY GIFT 2% OF MY PROPERTY LOCATED AT 2310 CASS AVE., DETROIT, MICHIGAN TO: LAWRENCE DEFIORÉ VALUED IN THE AMOUNT OF \$12,000." Exhibit B is dated November 6, 1998 and signed by James D. Ferns.

On September 23, 2014, 2310 Cass Avenue was sold for \$2 million. Thus, Plaintiffs assert that O'Shaughnessy is owed \$60,000 and Defiore is owed \$40,000, plus interest from the date of the sale.

Defendant ATTS & L asserts that it is a Michigan Corporation that was validly formed in February 1989 that continues in existence today. James D. Ferns, III was its primary shareholder, officer, and director who operated the entity as a holding, leasing, and investment company. Ferns passed away on July 15, 2012. Defendant argues that since O'Shaughnessy was the company's attorney and Defiore was the company's CPA for many years, they clearly recognized or were charged with the responsibility for the separate existence of the corporate entity from its owner.

The evidence presented shows that ATTS & L owned the property located at 2310 Cass Avenue. James D. Ferns, in his personal capacity, did not own the property located at 2310 Cass

Avenue, and thus had no interest in that property that he could gift to the Plaintiffs or to anyone else.

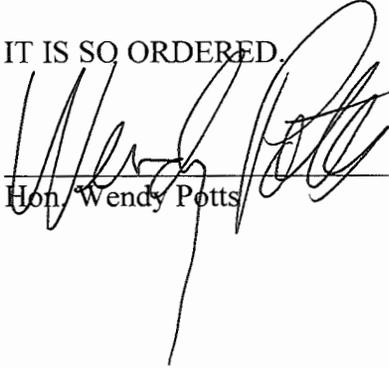
“Michigan courts typically consider corporations legally distinct from their shareholders, even if a single shareholder owns all the stock.” *Department of Consumer Industry Services v Shah*, 236 Mich App 381, 393; 600 NW2D 406 (1999) (citations omitted). Plaintiffs briefly state that the corporate entity is a mere instrumentality of James D. Ferns, III and that James D. Ferns, III was the alter ego of ATTS & L. While piercing the corporate veil is appropriate when there is evidence of fraud, illegality, or injustice, no such evidence has been presented in the instant matter. *Id.* Accordingly, justice and equity do not require piercing the corporate veil in the instant matter.

In conclusion, the Court finds no cause because James D. Ferns, III did not have an interest in 2310 Cass Avenue. All the evidence presented shows that during the relevant time period ATTS & L owned 2310 Cass Avenue, and there is no evidence showing that Defendant gifted the property to Plaintiffs. Accordingly, Plaintiffs’ claims are dismissed. This order resolves the last pending claim and closes the case.

Dated:

SEP 14 2016

IT IS SO ORDERED.

  
Hon. Wendy Potts