

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

JOHN KNOX VILLAGE, a Missouri Not-For-Profit Corporation,

Respondent,

v.

**FORTIS CONSTRUCTION COMPANY, LLC, ARMANDO DIAZ, TOM M. NADLER,
DON S. NADLER & GARY P. RODENBERG,**

Appellants.

DOCKET NUMBER WD76708

Date: September 30, 2014

Appeal from:

Jackson County Circuit Court

The Honorable Michael W. Manners, Judge

Appellate Judges:

Division One: Mark D. Pfeiffer, Presiding Judge, Lisa White Hardwick and Karen King Mitchell, Judges

Attorneys:

Jerry D. Rank, Overland Park, KS, for appellant.

Stanley B. Bachman, Olathe, KS, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

JOHN KNOX VILLAGE, a Missouri Not-For-Profit Corporation

Respondent,

v.

**FORTIS CONSTRUCTION COMPANY, LLC, ARMANDO DIAZ, TOM M.
NADLER, DON S. NADLER & GARY P. RODENBERG,**

Appellants.

WD76708

Jackson County

Before Division One: Mark D. Pfeiffer, Presiding Judge, Lisa White Hardwick and Karen King Mitchell, Judges

Fortis Construction Company, LLC, Tom Nadler ("T. Nadler"), Don Nadler ("D. Nadler"), Gary Rodenberg, and Armando Diaz (referred to collectively as "Appellants") appeal from a judgment ordering them to pay actual and punitive damages to John Knox Village ("JKV") on JKV's claim for fraudulent misrepresentation, fraudulent conveyance, and civil conspiracy. In their five points on appeal, Appellants contend: (1) the circuit court lacked subject matter jurisdiction over the claim; (2) the court's finding that T. Nadler, D. Nadler, and Rodenberg made fraudulent misrepresentations to JKV was not supported by the evidence; (3) the court misapplied the law in determining the amount of actual damages; (4) the court's finding that a civil conspiracy existed was not supported by sufficient evidence and was against the weight of the evidence; and (5) the court's determination that punitive damages were warranted was not supported by sufficient evidence and was against the weight of the evidence.

AFFIRMED.

Division One holds:

(1) The circuit court did not err in denying Appellants' motion to dismiss or to vacate the judgment on JKV's claim for fraudulent misrepresentation, fraudulent conveyance, and civil conspiracy for lack of subject matter jurisdiction. It is undisputed that the bankruptcy court did not exercise its exclusive jurisdiction over JKV's claim; therefore, the circuit court properly exercised its jurisdiction.

(2) The circuit court did not err in piercing Triad's corporate veil to hold its owners, T. Nadler, D. Nadler, and Rodenberg, individually responsible. Substantial evidence supported the court's determination that Triad's owners used their control of the company to make fraudulent misrepresentations to JKV.

(3) The circuit court did not misapply the law in determining the amount of damages to award JKV. Because Triad's owners chose not to use JKV's payments to pay the subcontractors, thereby subjecting the property to potential liens totaling \$127,121.14, JKV essentially received nothing of value in return for the \$124,299.23 it paid Triad and Fortis. Therefore, JKV was entitled to recover this amount as its damages.

(4) The circuit court's finding that a civil conspiracy existed between Appellants was supported by substantial evidence and was not against the weight of the evidence. The evidence established that each of the Appellants acted with a unity of purpose, a common design and understanding, or a meeting of the minds to unlawfully benefit themselves at JKV's expense by conveying JKV's payments to themselves, either directly or indirectly, instead of to the subcontractors. Although Appellants offered

contrary evidence, we defer to the circuit court's assessment of that evidence as unpersuasive.

(5) The circuit court's determination that punitive damages were warranted was supported by substantial evidence and was not against the weight of the evidence. The evidence established that Appellants' conduct was malicious and premised upon an evil motive that was intentional, willful, reckless, and indifferent to JKV's rights. Although Appellants offered contrary evidence, we defer to the circuit court's credibility determinations.

Opinion by: Lisa White Hardwick, Judge

September 30, 2014

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