In the Missouri Court of Appeals
Eastern District

DIVISION ONE

PHARMACY CORPORATION OF AMERICA, Respondent, v. BINYAMIN M. KLEIN, A/K/A BENJAMIN KLEIN, INDIVIDUALLY AND AS TRUSTEE OF THE BINYAMIN KLEIN REVOCABLE TRUST U/A/D 7/15/1997, JPKB ASSOCIATES, LLC, D/B/A PREMIER RX HEALTH SOLUTION, SUNSPIRE PHARMACY, LLC, PHBS, LLC, D/B/A BIG SPRING CARE CENTER, PHEM, LLC, D/B/A EDGEWOOD MANOR NURSING HOME, PHDC, LLC, D/B/A BUFFALO PRAIRIE CARE CENTER, PHCA, LLC, D/B/A COUNTRY AIRE RETIREMENT ESTATES, PHBC, LLC, D/B/A CASSVILLE HEALTH CARE AND REHAB, PGVN, LLC, D/B/A GARDEN VALLEY NURSING AND REHABILITATION CENTER, PHGG, LLC, D/B/A GEORGIAN GARDENS NURSING CENTER, PHGY, LLC, D/B/A GOLDEN YEARS, PCHN, LLC, D/B/A MAPLE WOOD CARE CENTER, ADDISON REHABILITATION & LIVING CENTER LLC, D/B/A ADDISON REHABILITATION AND LIVING CENTER, AND PHMC, LLC, D/B/A MARSHFIELD CARE CENTER,	)	No. ED113688 Filed: June 30, 2026

Appellants,	)
and	)
PARESH VIPANI, INDIVIDUALLY AND AS TRUSTEE OF THE PARESH VIPANI REVOCABLE TRUST DATED AUGUST 29, 2021,	)
Defendant.	)

Appeal from the Circuit Court of St. Louis County
The Honorable Dean P. Waldemer, Judge

INTRODUCTION

Binyamin M. Klein, a/k/a Benjamin Klein, Individually and as Trustee of the Binyamin Klein Revocable Trust (Klein), and Paresh Vipani, Individually and as Trustee of the Paresh Vipani Revocable Trust (Vipani) separately appeal from the judgment of the trial court entered in favor of Pharmacy Corporation of America (PharMerica) on claims related to its purchase of a pharmacy service provider, Premier Rx. We affirm in part and reverse and remand in part.

BACKGROUND

Klein formed Sunspire Pharmacy, LLC (Sunspire) to purchase JPKB Associates, LLC, (JPKB), doing business as Premier Rx on January 1, 2015. He owned interests in multiple long-term care facilities throughout Missouri which contracted with Premier Rx to provide pharmacy services. Klein also owned Platinum Health Care, LLC (Platinum), a management company which provided accounting and financial services to his facilities. Vipani was the chief financial officer (CFO) of Platinum, who oversaw the

flow of funds within Klein's facilities. As part of Vipani's compensation package, Klein granted him a four percent ownership interest in Premier Rx.

In January 2016, Klein initiated negotiations to sell Premier Rx by contacting Chris Schaefer (Schaefer), PharMerica's senior vice president of corporate development. On June 22, 2016, after financial and legal due diligence, PharMerica purchased Premier Rx for the sum of $9.35 million. The parties entered an asset purchase agreement (APA) which listed twenty-seven facilities with whom Premier Rx had a pharmacy services agreement (PSA), to include those owned by Klein. PharMerica assumed these PSAs as "Material Contracts" of the APA. Klein represented and warrantied **except as provided in Schedule 3.14(b)**, he had no knowledge of any threat or notice of termination of the twenty-seven Material Contracts. Schedule 3.14(b) listed: "None." Two facilities, Gregory Ridge and Parkway Health and Rehab (Parkway), were specifically named on Schedule 3.14(a). Both facilities were essential to Schaefer's valuation of Premier Rx because without them the parties would have reached a different agreement if any at all.

The transaction closed on July 18, 2016. The same day a nursing home broker contacted Schaefer regarding the potential sale of Klein's facilities, which Schaefer thought was odd but not necessarily alarming. However, there was real cause for alarm in October 2016, when Robert Craddick (Craddick), general counsel for Reliant Care Management (Reliant), contacted Schaefer. Craddick informed him Reliant purchased Gregory Ridge and Parkway (Reliant facilities) in March 2016 (during PharMerica's legal and financial due diligence prior to signing the APA in June) and was terminating each PSA effective October 1, 2016. According to Craddick, Klein knew the PSAs

would eventually be terminated because Craddick told Klein Reliant planned to utilize its own pharmacy. Not only did Klein fail to inform Schaefer the Gregory Ridge or Parkway facilities were sold, he warrantied and represented he had no knowledge of any threat or notice of termination when in fact he knew Reliant intended to terminate the PSAs. After Schaefer discovered the Reliant facilities had been sold, Klein also transferred ownership of his remaining facilities and, as a result, several of the Section 3.14(a) Material Contracts were terminated with large outstanding balances.

On August 16, 2017, PharMerica sent the required notice (Claim Notice) to Klein and Platinum alleging breaches of the APA. Klein confirmed receipt of the notice but did not respond to the substantive claims as required by the APA. Consequently, PharMerica filed suit on June 26, 2018, asserting multiple counts against Klein, Vipani, Premier Rx, and several individual facilities. After a bench trial in May 2024, and upon PharMerica's motion to amend, the court entered an amended judgment in favor of PharMerica on May 7, 2025. Neither Klein nor Vipani filed any post-trial motions challenging the court's judgment. This appeal follows.

DISCUSSION

Klein asserts five points on appeal, arguing the evidence was insufficient to support a finding of breach of contract, PharMerica failed to comply with the Claim Notice requirement of the APA, the court failed to apply the APA contractual damages cap, PharMerica did not present sufficient evidence to establish its claim to pierce the corporate veil, and the court erred awarding PharMerica attorney fees.

Each of Vipani's five points on appeal challenge only the imposition of liability against him for PharMerica's piercing the corporate veil claim.[1] He argues the trial court exceeded its authority imposing such liability against him because no such relief was pleaded in the petition, the evidence was legally insufficient to support liability, the judgment was not supported by substantial evidence and was against the weight of the evidence.

Standard of Review

Our review of a bench-tried case is set forth in *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976). *Coleman v. Hartman*, 626 S.W.3d 289, 295 (Mo. App. W.D. 2021). We will affirm the court's judgment unless it is not supported by substantial evidence, it is against the weight of the evidence, or it erroneously declares or applies the law. *Id*. In addition, we view the evidence in the light most favorable to the judgment, and defer to the trial court with respect to credibility determinations. *Id*.

KLEIN APPEAL

Klein's points one, three, and five are premised upon his conduct regarding the sale of the Gregory Ridge and Parkway facilities which were Material Contracts in Section 3.14(a) of the APA. Whether Klein made false representations and warranties in

[1] Moreover, only in a footnote to the introduction of his brief does Vipani assert, "To the extent applicable, [he] joins in the more general arguments advanced in the other defendants' brief." Presenting the issue for the first time in a footnote preserves nothing for our review. *See e.g. Abram v. TitleMax of Missouri, Inc.*, 684 S.W.3d 74, 88 n.17 (Mo. App. E.D. 2023).

Section 3.14(b) regarding the termination of each corresponding PSA forms the basis for the trial court's finding of breach of contract (point one), exemption from the APA's damages cap for "Actual Fraud" (point three), and the court's award of attorney fees (point five); therefore, we consider them together.

Crucial to the analysis of these three points are the court's findings based on the evidence at trial, viewed in the light most favorable to the judgment, which shows Klein claimed Reliant agreed to assume the PSAs or incur liability for their termination. However, Craddick directly contradicted Klein's testimony when he stated Klein knew Reliant never intended to assume the PSAs for the facilities, which was supported by the contract between Klein and Reliant. Most notably, Schaefer testified he believed PharMerica was obtaining the benefit of all Material Contracts listed in Schedule 3.14(a), which included the Reliant facilities. He claimed Klein failed to disclose the sale of Gregory Ridge or Parkway any time prior to the closing of the APA in July 2016, because had PharMerica known this information, it would have "changed the structure of the deal, if not killed it altogether" as he knew Reliant had an equity interest in its own pharmacy and would terminate PharMerica's services.

The court found Klein was not credible in contrast to Craddick and Schaefer, whose testimony the court found to be "consistent, credible, and supported by documentary evidence." This particular credibility finding is sufficient to defeat Klein's claims in points one, three, and five on appeal.

Breach of Contract and Attorney Fees

In his first point, Klein argues the trial court erred in entering judgment in favor of PharMerica on its breach of contract claim because the transfer of any facility did not result in a breach of the representations or warranties he made under the APA. He asserts there was no evidence any of the other representations or warranties he made were false. In point five, he argues the trial court erred in awarding attorney fees to PharMerica. Because the award of fees was premised upon the plain language of the APA and Klein's breach of the contract, we consider these points together.

Analysis

The essential elements of a breach of contract claim are: (1) the existence of a contract; (2) plaintiff's performance of the contract; (3) breach of the contract by defendant; and (4) damages. *Bell v. Shelter Gen. Ins. Co.*, 701 S.W.3d 614, 618 (Mo. banc 2024) (quoting *Keveney v. Mo. Mil. Acad.*, 304 S.W.3d 98, 101 (Mo. banc 2010)).[2] Klein challenges only the evidence to support the element of breach.

In Article III of the APA Klein made multiple representations and warranties as a Principal to the agreement. But central to this appeal is Klein's assurance neither he nor Premier Rx had notice or knowledge of any threat to terminate any Material Contract set

[2] In his argument, Klein asserts the APA expressly provides for application of Delaware law under Section 9.12. We agree. However, as relevant to this appeal, the substantive law of Delaware and Missouri is essentially the same and the parties largely rely on Missouri caselaw in their briefs; therefore, we cite Missouri law herein. Moreover, where relevant, the plain language of the APA controls.

forth in the APA, which included the PSAs for the Klein-owned facilities (Section 3.14(b)); Premier Rx maintained good relations with its ten largest customers and Klein did not have knowledge of any threat from any of those customers to "cancel or otherwise terminate" its relationship with Premier Rx (Section 3.18).

Upon the record before us and the court's credibility finding, we hold there is substantial evidence of Klein's breach of the APA based solely upon his false representations in Sections 3.14 and 3.18 regarding the sale of Gregory Ridge and Parkway to Reliant. As this issue is dispositive, we need not discuss the merits of his other misrepresentations and breaches of the APA. Thus, the trial court did not err entering judgment in favor of PharMerica on its breach of contract claim against Klein.

Based upon Klein's breach of the APA, the trial court awarded PharMerica attorney fees. We review whether the trial court properly awarded attorney fees *de novo*. *Desu v. Lewis*, 427 S.W.3d 843, 844 (Mo. App. E.D. 2014) (internal citation omitted). Both Missouri and Delaware have adopted the "American Rule" regarding attorney fees. *Rosehill Gardens, Inc. v. Luttrell*, 67 S.W.3d 641, 648 (Mo. App. W.D. 2002) (internal citation omitted); *In re Delaware Pub. Sch. Litig.*, 312 A.3d 703, 715, 716 (Del. 2024). This requires litigants generally bear the expense of their own fees absent a contractual agreement otherwise. *Id.* Here, the parties contractually agreed to an award of attorney fees under Section 7.2(a)(i) of the APA. It requires Klein to indemnify PharMerica "from and against all Losses." "Loss" is defined in the APA as amounts recoverable from various proceedings, "including court costs and reasonable attorneys' fees, expenses, and disbursements."

As discussed above, the trial court's finding that Klein breached the representations and warranties contained in the APA was not erroneous. Thus, under Section 7.2(a)(i) of the APA, he was required to indemnify PharMerica from the "Loss" associated with such breach, which included attorney fees. As a result, the trial court's award of attorney fees was not error. Points one and five on appeal are denied.[3]

Actual Fraud

In point three on appeal, Klein argues the trial court erred entering judgment in favor of PharMerica because it failed to apply the contractual damages cap in Section 7.5 of the APA. Klein specifically challenges the "Actual Fraud" finding exception to the damages cap in the contract. He claims he did not knowingly make any false representation because he did not have a duty to disclose information outside the scope of the APA. Finally, he argues even if PharMerica could show a duty to disclose, there was no evidence to prove PharMerica reasonably relied on the lack of disclosure.

Analysis

In the event of a breach of any of the relevant representations or warranties, Section 7.5(b) limits the aggregate liability of the Seller and Principals to $2 million, "other than with respect to any Fundamental Representation or for Actual Fraud, in any

[3] PharMerica also filed a motion for attorney fees on appeal, which was taken with the case. In its judgment, the trial court made specific findings regarding the excessive nature of the fees sought by PharMerica and reduced the amount accordingly. We grant PharMerica's motion and remand to the trial court to determine an appropriate award of attorney fees on appeal because of the trial court's expertise regarding fees. *See Rosehill Gardens, Inc.*, 67 S.W.3d at 648.

case, for which the following limitation will not apply." "Actual Fraud" is defined in the APA as:

> (i) a Person made a representation in connection with entering into this Agreement that was false; (ii) such Person knew at the time the representation was made that such representation was false; (iii) such Person intended another Person party to this Agreement to rely on the representation; and (iv) such other Person party to this Agreement reasonably or justifiably actually relied upon the misrepresentation to such Person's detriment.

Klein had a duty under the APA to disclose any knowledge of the potential termination of any Material Contract listed in Schedule 3.14(a). The PSAs for the Reliant facilities were included in this list. Klein represented and warrantied he had no knowledge of any threat or notice of termination of the PSAs, and PharMerica relied on this information to determine the structure and valuation of the transaction.

Here, the evidence and the court's credibility findings were sufficient to show Klein knew Reliant would terminate the PSAs for the Gregory Ridge and Parkway facilities when he transferred ownership to PharMerica. We defer to these credibility determinations. *Coleman*, 626 S.W.3d at 295. It is clear from the record, viewed in the light most favorable to the judgment, Klein's actions met the definition of Actual Fraud contained in the APA. Thus, Klein's liability was not limited pursuant to Section 7.5 of the APA, and the trial court did not err in finding the damages cap did not apply. Point three on appeal is denied.

Claim Notice

In point two on appeal, Klein contends the trial court erred entering judgment in favor of PharMerica because it failed to comply with the Claim Notice requirements of the APA. According to Klein, the Claim Notice PharMerica sent did not contain the requisite detail to support a finding of liability.

Analysis

To seek indemnification pursuant to Section 7.3(a) of the APA, PharMerica was required to give Klein written notice "describing in reasonable detail the facts giving rise, or that would reasonably be expected to give rise, to the claim for indemnification." This notice

> shall include (if and to the extent then known) the amount and the method of computation of the amount of such claim, a reference to the provision of [the APA] or any agreement, certificate or instrument executed pursuant hereto or executed herewith upon which such claim is based and all material documentation relevant to the claim . . . .

Section 7.3(a) further states the Claim Notice is to be given "promptly" following discovery of the facts or events giving rise to the claim for indemnification, "provided that the failure to give such written notice shall not relieve any Indemnitor of its obligations hereunder, except to the extent it shall have been prejudiced by such failure."

On August 16, 2017, PharMerica sent a Claim Notice to Klein detailing the facts giving rise to the claim for indemnification. Specifically, PharMerica cited the transfer of certain facilities and the subsequent termination of the PSAs. The Claim Notice identified these transfers as breaches of "the representations and warranties contained in Sections 3.9 (Litigation), 3.14 (Material Contracts) and 3.18 (Customers and Suppliers)."

PharMerica stated the amount of the claim and the method for arriving at that amount. The Claim Notice asserted a claim of "Actual Fraud" as defined in the APA, thus putting Klein on notice damages would not be subject to the cap set forth in Section 7.5.

PharMerica's initial Claim Notice contained the information known to it at the time. Klein's subsequent transfers of his additional facilities and PharMerica's discovery of omissions related to the legal due diligence and his failure to disclose litigation and regulatory matters became known after the Claim Notice and through discovery in the instant action. Klein was clearly on notice of the basis of the initial claim for damages, the assertion of Actual Fraud and losses claimed outside the limitations contained in Section 7.5 based on his conduct.

In fact, it was Klein who failed to respond to the Claim Notice and violated the APA. He had notice of the additional claims of damage when the petition was filed and vigorously defended himself in the consequent litigation. As a result, the trial court did not err in determining PharMerica gave Klein proper notice of its claim for indemnification and Klein failed to show any prejudice from his "perceived deficiency" in the Claim Notice. Point two is denied.

Piercing the Corporate Veil

In point four, Klein claims the trial court erred entering judgment in favor of PharMerica against him individually because PharMerica failed to establish the required elements of a claim for piercing the corporate veil. He argues PharMerica failed to prove Klein's sufficient control or dominion over the facility defendants.

Analysis

Business entities, such as limited liability companies, are generally regarded as separate legal entities, distinct from the owners who compose those entities. *Hibbs v. Berger*, 430 S.W.3d 296, 306 (Mo. App. E.D. 2014) (internal citations omitted). Shareholders of a corporation or members of an LLC are not typically liable for the debts of the corporation or LLC. *Id*. However, in certain instances, courts may disregard the separate identity of the business and permit a creditor to "pierce the corporate veil," to impose personal liability upon the shareholders or members. *Id*. In order to do so, a plaintiff must show control over the entity of such complete dominion, not only of finances, but also of business policy and practices, the corporate entity had no separate mind, will, or existence of its own. *Mobius Mgmt. Sys, Inc. v. W. Physician Search, LLC*, 175 S.W.3d 186, 188 (Mo. App. E.D. 2005) (citing *66, Inc. v. Crestwood Commons Redev. Corp.*, 998 S.W.2d 32, 40 (Mo. banc 1999)).

"In other words, the plaintiff must show that the corporation is the *alter ego* of the defendant." *Id*. (emphasis in original). If a corporation is so dominated by an individual as to be a mere instrument of that person, indistinct from the individual in control, a court will disregard the corporate form if maintaining it would result in injustice. *Id*. Moreover, this control is not limited solely to finances, but must also be over policy and business practices with respect to *the transaction attacked*. *Commonwealth Land Title Ins. Co. v. Miceli*, 480 S.W.3d 354, 371 (Mo. App. E.D. 2015) (internal citations omitted) (emphasis in original).

At trial, PharMerica established Klein had a majority ownership in the pharmacy being purchased and ownership of the nursing home facilities the pharmacy serviced, and he exercised sole control of his management company, Platinum, which in turn controlled all financial aspects of the nursing homes he owned. Hannah Lebovics, one of Klein's managers for Platinum, established Klein was her "boss" and he would approve payments from the facilities to vendors. The evidence at trial also established via Platinum, Klein paid himself "management fees" for the financial services provided to the facilities before paying any other vendor, regardless of the other debts.

The trial court found the "totality of the evidence shows that Klein exercised total dominion over his entire nursing home enterprise," and "he wielded that control to effectively siphon assets from his entities into Platinum while using those entities' corporate veils to shield himself from personal liability." As evidenced by his ownership and control over each of the nursing home facilities themselves involved in the transaction, the management company that centrally controlled all financial aspects of the facilities, and the pharmacy being sold, it is clear these findings were supported by substantial evidence. Point four on appeal is denied.

VIPANI APPEAL

Vipani separately asserts five points on appeal. As a threshold matter, we must first consider PharMerica's argument in the respondent's brief that Vipani failed to preserve any of his arguments for appeal because he failed to present them to the trial

court. In his reply brief, Vipani contends he did not have to file any post-trial motion to preserve his claims for appeal pursuant to Rule 78.07(b).[4]

Following a court-tried case, no motion for new trial or to amend the judgment is required to preserve issues for appellate review "if the matter was previously presented to the trial court." Rule 78.07(b). But, as here, if the matter is not presented to the trial court such motions are required, and Vipani's failure to do so preserves nothing on appeal. *Williams v. Williams*, 669 S.W.3d 708, 717 (Mo. App. E.D. 2023) (internal citation omitted).

Fortunately for Vipani, Section 510.310.4 RSMo (2016), permits our review of "[t]he question of the sufficiency of the evidence to support the judgment . . . whether or not the question was raised in the trial court." *See also Payne v. Nilsson*, 679 S.W.3d 543, 547 n.2 (Mo. App. W.D. 2023). To the extent his second point on appeal challenges the sufficiency of the evidence to support liability for piercing the corporate veil under an alter-ego theory, we review only this point.

Sufficiency of the Evidence

In point two on appeal, Vipani argues the evidence was legally insufficient to support imposition of liability upon him individually under a theory of piercing the corporate veil. He claims the facts established at trial, viewed in the light most favorable to the judgment, did not support a finding he exercised the requisite degree of control

[4] All references to Rules are to Missouri Supreme Court Rules (2025). In response to Vipani's reply brief, PharMerica filed a motion for leave to file supplemental authority, which was taken with the case. PharMerica's motion is granted.

over any relevant facility to support liability. Instead, the court improperly based his liability solely on the finding that he controlled the "flow of money."

The doctrine of piercing the corporate veil must be used with caution. *Commonwealth Land Title Ins. Co.*, 480 S.W.3d at 371 (citing *Blanks v. Fluor Corp.*, 450 S.W.3d 308, 376 (Mo. App. E.D. 2014)). In order to pierce the corporate veil a plaintiff must show control equating to "complete dominion" over the corporation such that it had no separate mind, will, or existence of its own. *Mobius Mgmt. Systems, Inc.*, 175 S.W.3d at 188 (internal citation omitted). This control is not limited solely to finances, but must also be over policy and business practices with respect to *the transaction attacked*. *Commonwealth Land Title Ins. Co.*, 480 S.W.3d at 371 (internal citations omitted) (emphasis in original).

Even viewing the evidence in the light most favorable to the judgment and giving all due deference to the trial court's credibility determinations, the record does not contain evidence of Vipani's requisite "complete dominion" over the facility defendants in this case, particularly with respect to the transaction at issue. Instead, the record supports the trial court's sole conclusion Vipani centrally controlled the flow of money. Vipani, as CFO of Platinum, testified he oversaw the finance, accounting, and accounts payable and receivable departments of Platinum, which in turn provided such services to the facilities Klein owned. However, Hannah Lebovics, the accounts payable manager for Platinum, testified at trial although Vipani was her "boss," Klein was Vipani's "boss."

In contrast to Klein's "complete dominion" over the facilities Premier Rx serviced, the pharmacy itself, and the management company that controlled all financial aspects of

the facilities, there is simply no evidence outside Vipani's role as CFO of Platinum and his minority ownership interest in Premier Rx, he exercised any control with regard to the policies and practices of the companies involved in the transaction. Instead, the testimony and evidence at trial consistently established Klein was the ultimate decision-maker for Premier Rx, Platinum, and the facilities he owned. As a result, there was not sufficient evidence to support a finding of liability under a theory of piercing the corporate veil or alter-ego as to Vipani.

CONCLUSION

The judgment of the trial court is affirmed in part and reversed and remanded in part as to Vipani's joint and several liability for PharMerica's veil-piercing and alter-ego claims. The cause is remanded for determination of attorney fees on appeal and for further proceedings as to the extent of Vipani's liability under the APA, consistent with this opinion.

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Lisa P. Page, Judge

Robert M. Clayton III, Presiding Judge and
Michael E. Gardner, Judge, concur.