

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-38

AMANDA HARPER

vs.

Z2A ENTERPRISES, INC., & another.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

Alex Nasrawi, the president and sole officer of defendant Z2A Enterprises, Inc. (Z2A), doing business as Half Time Sports Bar and Grill, appeals from the Superior Court's denial of his motion to dissolve an attachment on his property. He argues that (1) the attachment should not have issued because he was not a party to the underlying Massachusetts Commission Against Discrimination (MCAD) case or the ensuing Superior Court proceedings, and the plaintiff did not show a likelihood of success in piercing the corporate veil; and (2) the plaintiff did not serve him within the requisite sixty days of filing her action in Superior Court. We affirm.

¹ Adham Al Abdullah.

Background. As a result of her mistreatment at a Fall River restaurant where she worked as a cook and kitchen manager, the plaintiff, Amanda Harper, filed an MCAD complaint against her former employer, Z2A, and her manager, Adham Al Abdullah (defendants), alleging sexual harassment, a hostile work environment, and constructive discharge. MCAD ruled in Harper's favor and ordered the defendants to pay her \$63,250 in damages and attorney's fees.

In Superior Court, Harper petitioned for enforcement of the MCAD order. Harper also moved ex parte for an attachment on real estate at 30 Clark's Cove Drive, Dartmouth (property). Her motion asserted that the property was owned by Nasrawi, who was the president, treasurer, secretary, and sole director of Z2A, and that he had "exercised pervasive control over Z2A to use Z2A as his alter ego . . . for his personal benefit, without following proper corporate protocol or observing corporate formalities." Since Z2A had by then been dissolved, the motion further asserted that it was appropriate to "pierce the corporate veil" and attach the property. A Superior Court judge ordered the attachment on the property "owned by Z2A Enterprises, Inc., and/or Alex G. Nasrawi."² A default judgment subsequently entered against the defendants.

² In accordance with Mass. R. Civ. P. 4.1 (f), 365 Mass. 737 (1974), the judge found that (1) "[t]here is a reasonable

Some seven months after attachment of the property, Nasrawi filed an emergency motion to dissolve the attachment, which a different judge denied. About ten months after that, Nasrawi again moved to modify or dissolve the attachment. The second judge denied the motion, finding that Harper had "established a likelihood of success in piercing the corporate veil and holding . . . Nasrawi liable." Nasrawi now appeals from that ruling.

Discussion. 1. Piercing the corporate veil. Pursuant to Mass. R. Civ. P. 4.1 (a), 365 Mass. 737 (1974), real estate may "be attached and held to satisfy the judgment for damages and costs which the plaintiff may recover." The court may approve an ex parte attachment upon a finding that "there is a reasonable likelihood that the plaintiff will recover judgment in an amount equal to or greater than the amount of the attachment" Mass. R. Civ. P. 4.1 (f).

An order approving attachment of assets is reviewed for an abuse of discretion. See King v. Town Clerk of Townsend, 480 Mass. 7, 9 (2018) (preliminary injunctions reviewed for abuse of discretion); R.G. v. Hall, 37 Mass. App. Ct. 410, 411 n.3 (1994) (preliminary injunctions and attachments subject to same

likelihood that the plaintiff will recover judgment . . . [2] [t]here is a clear danger that the defendant if notified in advance of attachment of his property will remove it from the Commonwealth or conceal or convey it, or [3] [t]here is immediate danger that the defendant will damage, destroy or waste the property to be attached."

standard of review). "[A] judge's discretionary decision constitutes an abuse of discretion where we conclude the judge made 'a clear error of judgment in weighing' the factors relevant to the decision . . . such that the decision falls outside the range of reasonable alternatives." L.L. v. Commonwealth, 470 Mass. 169, 185 n.27 (2014). "[I]t is . . . not an abuse of discretion simply because a reviewing court would have reached a different result." Id.

Nasrawi argues that the judge erred in denying his motion to dissolve the attachment against the property because he was not a party to the underlying MCAD or Superior Court actions, and Harper failed to establish a likelihood of success in piercing the corporate veil. Although Nasrawi was not named as a party in the underlying actions, the Superior Court judge found that the plaintiff "ha[d] established a likelihood of success in piercing the corporate veil and holding Mr. Nasrawi liable."

Piercing the corporate veil is "not a cause of action but an equitable doctrine by which an act or obligation of a corporation giving rise to a cause of action may be charged to a principal of the corporation." Kraft Power Corp. v. Merrill, 464 Mass. 145, 146 (2013). In determining whether to pierce the corporate veil, the judge was required to consider: "(1) common ownership; (2) pervasive control; (3) confused intermingling of

business activity assets, or management; (4) thin capitalization; (5) nonobservance of corporate formalities; (6) absence of corporate records; (7) no payment of dividends; (8) insolvency at the time of the litigated transaction; (9) siphoning away of corporate assets by the dominant shareholders; (10) nonfunctioning of officers and directors; (11) use of the corporation for transactions of the dominant shareholders; [and] (12) use of the corporation in promoting fraud." Evans v. Multicon Constr. Corp., 30 Mass. App. Ct. 728, 733 (1991), citing Pepsi-Cola Metro. Bottling Co. v. Checkers, Inc., 754 F.2d 10, 14-16 (1st Cir. 1985). "[B]ut the exercise is, of course, not one in counting. One examines the twelve factors to form an opinion whether the over-all structure and operation misleads." Evans, supra at 736.

Nasrawi served as the president, treasurer, secretary, and sole director of Z2A, which did business as Half Time Sports Bar and Grill. MCAD credited uncontested testimony that Nasrawi owned that restaurant. As for the property, Nasrawi held it in his own name, rather than Z2A's name, and used it as both his personal residence and Z2A's principal office. In addition, Z2A was dissolved before the plaintiff was able to recover her judgment, leaving her with no meaningful remedy. It was within the judge's discretion to pierce the corporate veil and "ignore corporate formalities, where such disregard is necessary to

provide a meaningful remedy for injuries and to avoid injustice" (citation omitted). Kraft Power Corp., 464 Mass. at 148. We are satisfied that the judge's determination that Harper showed a reasonable likelihood of success in piercing the corporate veil was a reasonable exercise of judgment. See L.L., 470 Mass. at 185 n.27. We discern no error or abuse of discretion.³

2. Service of process. We are unpersuaded by Nasrawi's argument that the judge should have allowed his motions to dissolve the attachment because he personally was "never served with Harper's MCAD action [l]or Harper's [p]etition in the lower court." The record shows that, within sixty days of its being filed in Superior Court, Harper's petition for judicial enforcement was served upon Z2A by hand delivery to "Sandra Nasrawi, agent, person in charge at the time of service for Z2A Enterprises, Inc., Alex G. Nasrawi[,], President 30 Clark's Cove Drive Dartmouth, MA 02748." See G. L. c. 223, § 115A. In addition, the writ of attachment on the property of Z2A "and/or Alex G. Nasrawi" was recorded with the registry of deeds, which is "conclusive evidence" of its delivery, G. L. c. 183, § 5.

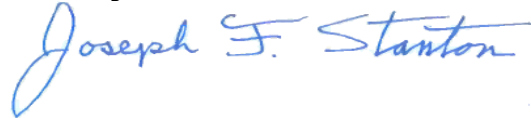
In these circumstances, we discern no error or abuse of

³ The judge, in essence, concluded that the property was "real estate . . . of the defendant," Z2A, for the purposes of Mass. R. Civ. P. 4.1 (b).

discretion.

Order denying motion to
modify or dissolve
attachment affirmed.

By the Court (Massing,
Singh & Grant, JJ.⁴),



Clerk

Entered: January 26, 2021.

⁴ The panelists are listed in order of seniority.