

RENDERED: FEBRUARY 21, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2000-CA-002838-MR

NUTRITION RICH PRODUCTS, INC.,

APPELLANT

v. APPEAL FROM MCCRACKEN CIRCUIT COURT
HONORABLE R. JEFFREY HINES, JUDGE
ACTION NO. 99-CI-00483

NUTRITIONAL RESOURCES, INC.,

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, DYCHE AND TACKETT, JUDGES.

BARBER, JUDGE: Appellant, Nutrition Rich Products, Inc.

(Nutrition Rich Products), appeals from entry of a summary judgment holding that it was the alter ego of the individuals Robert and Janis Ligon.

Appellee, Nutritional Resources, Inc. (Nutritional Resources), is a Georgia wholesaler of nutritional products. In 1997, Nutritional Resources obtained a judgment against Robert Ligon for \$153,000.00. Nutritional Resources also obtained a

judgment against Janis Ligon for \$16,000.00. The judgment stemmed from charges that Robert and Janis Ligon had embezzled company funds while part-owners of Nutritional Resources.

Janis and Robert Ligon were former employees of Nutritional Resources. In 1995 their employment with Nutritional Resources was terminated. At that time, Janis and Robert moved to Kentucky, and began a health food distributorship named Nutritional Source, Inc. Nutritional Source, Inc. was not funded by Mr. and Mrs. Ligon, and did not operate on property owned by Mr. and Mrs. Ligon. Nutritional Source, Inc. sold health foods nationwide, competing with Appellee Nutritional Resources. Nutritional Source, Inc. was not a successful company.

In 1998, Appellant Nutrition Rich Products, a Delaware corporation, purchased all the assets of Nutritional Source, Inc. for a purchase price of \$52,448.00. The assets included customer lists, inventory, and supplies. Margie Ligon, mother of Robert Ligon, furnished the purchase price on behalf of Nutrition Rich Products, which had no assets of its own. Margie Ligon made a down-payment of \$10,500.00 and a loan of \$41,948.00 to Nutrition Rich Products. Margie Ligon made additional loans of approximately \$40,000.00 to Nutrition Rich Products over time. The down-payment and loan proceeds were used by Nutritional Source, Inc. to pay its creditors. In exchange for

the loans, Margie Ligon obtained a duly perfected security interest in all of the assets of Nutrition Rich Products. The record does not reflect that Margie Ligon received any benefit from her ownership in the company, or any repayment of the loans she made to the company. Margie Ligon exercised no ownership interest in the company.

Janis Ligon was a part-time employee of Nutrition Rich Products during 1999, and Janis and Robert Ligon provided consulting services to Nutrition Rich Products without compensation. Robert Ligon's sister was given the title of President of Nutrition Rich Products, but the company was operated by the Lignons, who were paid consulting fees for their services. No other individual exercised any control over the company, and no individual other than the Lignons received any financial compensation for the alleged interest in the company.

Nutritional Resources moved the McCracken circuit court for a writ of attachment against the bank account held in the name of Nutrition Rich Products for the sums owed it by Janis and Robert Ligon. The McCracken circuit court held a series of three hearings to determine whether Robert and Janis Ligon had a controlling interest in Nutrition Rich Products. Testimony before the trial court was to the effect that Robert and Janis Ligon obtained funds from Nutrition Rich Products both as consulting fees, and in the names of other people.

Following the hearings, the circuit court issued an Order finding that Robert and Janis Ligon used the assets of Nutritional Source and Nutrition Rich Products as their own; that the business failed to observe the formalities of a corporation, and concluded that the individuals and the corporation were one and the same. The court held that Nutrition Rich Products was the alter ego of Robert and Janis Ligon. The circuit court permitted Nutritional Resources to attach the assets of Nutrition Rich Products to satisfy the judgment against Robert and Janis Ligon. Nutrition Rich Products and Janis and Robert Ligon argue that there is no procedural basis in Kentucky law supporting the trial court's actions.

CR 69.02 permits a judgment creditor to attach property owned by the debtor, or funds of the debtor held by a third party. Nutrition Rich Products argues that it held no funds of Robert or Janis Ligon. Nutrition Rich Products claims that KRS 425.501 bars a creditor from using a "reverse alter ego" claim to obtain funds against a third party, without formally filing a lawsuit against that third party. Nutritional Resources argues that requiring it to file a separate lawsuit against Nutrition Rich Products would delay justice, and give Robert and Janis Ligon time to sell the company, and hide the assets sought to be attached. The record reflects that Robert

and Janis Ligon did not pay their debts to Nutritional Resources, and that steps had been taken by the Ligons to avoid paying the judgment against them. Nutritional Resources argues that requiring it to file and prosecute a lawsuit against Nutrition Rich Products would have resulted in a miscarriage of justice, because the company was for sale at the time the writ was sought, and any assets held in the company's name at that time would have been sold prior to a judgment being entered against the company. Nutritional Resources argues that the trial court's actions were required by equity.

As an additional ground for reversal, Nutrition Rich Products asserts that genuine issues of material fact existed barring entry of summary judgment. The record does not reflect that summary judgment was entered against Nutrition Rich Products in this case. The trial court entered an order permitting a non-wage garnishment of the business proceeds to satisfy a loan of the individuals using the business proceeds to support themselves. As no summary judgment was entered, the Ligons' summary judgment argument does not merit review.

The trial court held that Robert and Janis Ligon controlled the profits of Nutrition Rich Products as their own. Nutrition Rich Products asserts that there was no evidence supporting the trial court's findings. Nutritional Resources claims that the testimony given in the hearings before the trial

court established that no genuine issues of material fact exist regarding the true ownership of the corporation. The trial court held extensive hearings, and made its determination based on the testimony gathered in those hearings. Former employees of Nutrition Rich Products testified that Robert and Janis Ligon "directed the operations" of Nutrition Rich Products. Testimony by the President and former director of Nutrition Rich Products shows that neither of those individuals exercised any control over Nutrition Rich Products, nor received any benefit from its profits.

A corporate veil may be pierced when three elements are present. White v. Winchester Dev. Corp., Ky., 584 S.W.2d 56 (1979). These elements include a showing that the corporation is a mere instrumentality of the shareholder; a finding that the shareholder exercises control over the corporation in such a way as to defraud or harm the creditor; and lastly, a showing that failure to disregard the corporate entity would subject the creditor to unjust loss.

The record shows that Robert Ligon received monetary gifts from his mother, the alleged owner of Nutrition Rich Products. Robert and Janis Ligon also received consulting fees from Nutrition Rich Products. Where a corporation has no assets of its own independent of those controlled by the persons claimed to be in control of the corporation, the court may find

that the corporation is just a shell, and is actually the alter ego of the individuals exerting leadership and control over it. See: American Collector's Exchange, Inc. v. Kentucky State Dem. Central Exec. Committee, Ky. App., 566 S.W.2d 759. 761 (1978). A lien can be permitted against the assets or funds of an alter ego corporation to satisfy the debt of the person who is the alter ego. See: Culver v. Culver, Ky. App., 572 S.W.2d 617, 622 (1978). The trial court permissibly found that the corporation was a sham, used to subvert public policy and to enable the Ligons to avoid payment of debts due under the valid out-of-state judgment. Under such circumstances, a court may properly pierce the corporate veil in the interest of justice. Commonwealth, Natural Resources & Environ. Protection Cabinet v. Neace, Ky., 14 S.W.3d 15, 19 (2000).

For the foregoing reasons we affirm the trial court's order permitting attachment of the proceeds of Nutrition Rich Products to satisfy the Ligons' debt to Nutritional Resources.

TACKETT, JUDGE, CONCURS.

DYCHE, JUDGE, DISSENTS WITHOUT SEPARATE OPINION.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

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