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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1161**

Loren Smeester,  
Appellant,

vs.

St. Croix Development Group, LLC, et al.,  
Respondents.

**Filed May 27, 2008  
Affirmed  
Muehlberg, Judge\***

Washington County District Court  
File No. 82-C2-06-000661

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Considered and decided by Klaphake, Presiding Judge; Wright, Judge; and  
Muehlberg, Judge.

**UNPUBLISHED OPINION**

**MUEHLBERG, Judge**

On appeal from a judgment involving a breached real estate purchase agreement,  
appellant argues that the district court should have pierced the corporate veil and held the

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\* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals  
by appointment pursuant to Minn. Const. art. VI, § 10.

director of respondent limited liability company personally liable for damages resulting from the breach. Because this issue is not properly before this court, and because appellant's argument relies upon inapplicable statutory provisions and does not address the relevant veil-piercing factors, we affirm.

## **FACTS**

On January 26, 2004, appellant Loren Smeester, Jr., and his father Loren Smeester, Sr., entered into a purchase agreement to buy two commercial office units in Maplewood from respondent St. Croix Development Corporation Group LLC ("St. Croix"). The Smeesters intended to purchase the units as an investment and lease them to tenants. As part of the agreement, St. Croix agreed to solicit prospective tenants and to lease the units "at terms acceptable to" the Smeesters. Closing was scheduled to occur after the units had been constructed and the interior spaces had been furnished to the tenants' specifications.

Despite several months of alleged marketing efforts, St. Croix was unable to lease the units. By that point, the parties' business relationship had become acrimonious, and they eventually agreed to a settlement that allowed St. Croix to cancel the purchase agreement in exchange for a negotiated settlement amount due to the Smeesters. However, St. Croix began to experience serious financial troubles and was unable to fulfill its obligation under the settlement agreement.

Appellant subsequently commenced this suit against St. Croix for breach of contract and against St. Croix's president, director, and sole shareholder, Bart Montanari, personally, for intentional interference with a contract. After a bench trial, the district

court found that St. Croix had breached its contractual duties to appellant and awarded damages for loss of sale opportunities and tax benefits, but found that there was “no showing that Montanari intentionally interfered with the Purchase Agreement.”

Appellant moved for amended findings of fact and conclusions of law, but the district court denied the motion. This appeal followed.

## D E C I S I O N

Appellant argues that the district court erred in refusing to pierce the corporate veil and hold Montanari personally liable for St. Croix’s breach of contract. But after a careful review of the record, we conclude that appellant’s veil-piercing argument is not properly before this court. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (noting that appellate courts only consider issues that were actually argued, considered, and decided below). Despite this general rule, we may review any matter as the interests of justice may require. Minn. R. Civ. App. P. 103.04.

However, we decline to consider this argument for the first time on appeal because the question of whether to pierce the corporate veil involves issues of fact, which have not been decided by a fact-finder. *See Victoria Elevator Co. of Minneapolis v. Meriden Grain Co.*, 283 N.W.2d 509, 512 (Minn. 1979) (providing a multi-factor, fact-based test for determining whether to pierce the corporate veil); *Kucera v. Kucera*, 275 Minn. 252, 254, 146 N.W.2d 181, 183 (1966) (noting that it is not within the province of appellate courts to determine fact issues on appeal). We also note that, even if appellant’s argument were properly before us, he waived this issue by relying on inapplicable statutory authority and failed to address the *Victoria Elevator* veil-piercing factors. *State*

*Dep't of Labor & Indus. v. Wintz Parcel Drivers, Inc.*, 558 N.W.2d 480, 480 (Minn. 1997) (declining to reach an issue that was inadequately briefed). Because this argument was raised for the first time on appeal, we affirm the district court.

**Affirmed.**