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STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0338

Valley Oil, Inc.,
Respondent,

vs.

2002 Chevy Tahoe, VIN: 1GNEK13212J222521,
MN License Plate #NUW688,
Appellant.

Filed January 13, 2009
Affirmed
Halbrooks, Judge

Scott County District Court
File No. 70-CV-05-25933

Michael W. McDonald, 16670 Franklin Trail Southeast, Suite 250, Prior Lake, MN 55372 (for respondent)

Patrick J. Ciliberto, Scott County Attorney, Todd P. Zettler, Special Assistant County Attorney, 200 Fourth Avenue West, Shakopee, MN 55379 (for appellant)

Considered and decided by Kalitowski, Presiding Judge; Halbrooks, Judge; and Harten, Judge.*

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

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

Appellant City of New Prague (the city) challenges the district court's dismissal of its forfeiture action. The city argues that the district court erred in finding that respondent Valley Oil, Inc. is the owner of the 2002 Tahoe and that Valley Oil is entitled to an innocent-owner defense. We affirm.

FACTS

Valley Oil is a small family-owned company that was incorporated in 1975. Valley Oil is an independent gas station with a bulk fueling plant, a truck that makes bulk-oil deliveries, a convenience store, and an area leased to mechanics. Valley Oil was originally owned by Cheryl Hotzler's father; but in 1974, Valley Oil was purchased by Cheryl and her husband, Calvin Hotzler. At the time of the incorporation, Calvin was the president and treasurer, and Cheryl was the vice-president and secretary. Calvin and Cheryl were the only shareholders.

Calvin ran Valley Oil until his death in 2004. Since then, no one has been elected president or treasurer, as required by the corporate bylaws, and Cheryl is the sole shareholder and officer. After Calvin died, Cheryl decided that their son, Jason Hotzler, who graduated from high school in 2002, should begin training to manage the company. By November 2005, Jason was working as the general manager. Jason was supervised by Cheryl; he was not an officer, shareholder, or director. Valley Oil had seven employees in 2005, most of whom were family members.

Valley Oil is the registered owner of a number of vehicles, including a pickup truck, a bulk truck, and a 2002 Chevrolet Tahoe that is at issue here. The 2002 Tahoe was purchased by Valley Oil in April 2005. Jason was the primary user of the 2002 Tahoe, and he used it for both personal and business purposes. In addition, other employees would occasionally use the 2002 Tahoe to run errands and make deliveries on a weekly basis.

On September 23, 2005, while driving the 2002 Tahoe, Jason was cited for possession of an open bottle of alcohol. Jason later pleaded guilty to the open-bottle charge. On November 25, 2005, Jason was stopped while driving the 2002 Tahoe for personal use and arrested for possession of 3.6 grams of psychedelic mushrooms, which had a retail value of more than $100. Jason testified that he never told Cheryl of the open-bottle conviction arising out of the September 23, 2005 incident before the November 25, 2005 arrest. Jason subsequently pleaded guilty to felony possession of a controlled substance and misdemeanor driving while impaired (DWI) related to the November 25, 2005 incident.

Pursuant to Minn. Stat. § 609.5314 (2004 & Supp. 2005), the city instituted a forfeiture action against the 2002 Tahoe. Valley Oil contested the forfeiture, asserting that it was the owner of the 2002 Tahoe and that it had an innocent-owner defense under Minn. Stat. § 609.5311 (2004 & Supp. 2005). At trial, it was undisputed that Jason had used the 2002 Tahoe on November 25, 2005, to transport a controlled substance with a retail value in excess of $100.

The district court dismissed the forfeiture action, finding that Valley Oil was the owner of the 2002 Tahoe and that Valley Oil was entitled to the innocent-owner defense. In support of its decision, the district court noted that Jason was not a shareholder, officer, or director of Valley Oil. The district court also found that Valley Oil purchased the 2002 Tahoe and that there was no evidence that Jason paid for the insurance or maintenance for the vehicle and that the 2002 Tahoe was used for both business and personal purposes. Finally, the district court ruled that Valley Oil was entitled to the innocent-owner defense because there was no evidence that Valley Oil knew that the 2002 Tahoe was being used or intended to be used illegally.

The city moved for a new trial or amended findings. In addition to its arguments concerning the ownership and innocent-owner issues, the city argued that Valley Oil was a sham corporation. The district court denied the city's motion. This appeal follows.

D E C I S I O N

The city contends that the district court erred in finding that Valley Oil was the owner of the 2002 Tahoe for purposes of the forfeiture, that Valley Oil was entitled to the innocent-owner defense, and that piercing Valley Oil's corporate veil cannot eliminate the innocent-owner defense for Valley Oil. When reviewing a district court's findings of fact, the appellate court shall not set such findings aside unless they are clearly erroneous and "due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01. But "[t]he appellate courts need not give deference to the [district] court's decision on a purely legal issue." *King v. One 1990 Cadillac DeVille*, 567 N.W.2d 752, 753 (Minn. App. 1997). "Statutory

construction is a question of law, which this court reviews de novo." *In re Kleven*, 736 N.W.2d 707, 709 (Minn. App. 2007) (citing *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 393 (Minn. 1998)).

Under Minnesota law, "all conveyance devices containing controlled substances with a retail value of $100 or more if possession or sale of the controlled substance would be a felony" are presumed to be subject to forfeiture. Minn. Stat. § 609.5314, subd. 1(a)(2). But under the innocent-owner defense, "[p]roperty is subject to forfeiture . . . only if its owner was privy to the [unlawful] use or intended use . . . , or the unlawful use or intended use of the property otherwise occurred with the owner's knowledge or consent." Minn. Stat. § 609.5311, subd. 3(d); *see Blanche v. 1995 Pontiac Grand Prix*, 599 N.W.2d 161, 166–67 (Minn. 1999) (incorporating the innocent-owner defense into cases where the forfeiture is initiated under Minn. Stat. § 609.5314 (1998) and a claimant demands a judicial determination of the forfeiture). An individual claiming the property bears the burden to rebut the presumption of forfeiture. Minn. Stat. § 609.5314, subd. 1(b).

A. The district court did not err in finding that Valley Oil was the owner of the 2002 Tahoe.

For purposes of a motor-vehicle forfeiture proceeding, "the alleged owner is the registered owner according to records of the Department of Public Safety." Minn. Stat. § 609.531, subd. 6a(b) (2004). "A certificate of title issued by the [Department of Public Safety] is prima facie evidence of the facts appearing on it." Minn. Stat. § 168A.05, subd. 6 (2004). In *Rife v. One 1987 Chevrolet Cavalier*, this court concluded that use of

the word "alleged" in section 609.531, subdivision 6a(b) (1988), indicates that registration is prima facie evidence of ownership but that the presumption is rebuttable. 485 N.W.2d 318, 321 (Minn. App. 1992), *review denied* (Minn. June 30, 1992).

Because Valley Oil was the registered owner of the 2002 Tahoe, it was the presumptive owner. Although the city emphasizes Jason's personal use of the vehicle to argue that the presumption of Valley Oil's ownership has been rebutted, on this record, the district court did not clearly err in its finding that the company owned the vehicle. Valley Oil purchased the 2002 Tahoe. Valley Oil paid to maintain the 2002 Tahoe, and the vehicle was used, at least in part, for business purposes. While it is undisputed that Jason also used the 2002 Tahoe for his personal benefit, as evidenced by his installation of a stereo system and his keeping a shotgun in the 2002 Tahoe, Jason's personal use of the 2002 Tahoe was authorized by Cheryl, the sole shareholder, director, and officer of Valley Oil.

B. The district court did not err in finding that Valley Oil was entitled to the innocent-owner defense.

The city argues that because knowledge of Jason's illicit activities should be imputed to Valley Oil, the district court erred in finding that Valley Oil was entitled to the innocent-owner defense. "[A] corporation is charged with constructive knowledge . . . of all material facts of which its officer or agent . . . acquires knowledge while acting in the course of employment within the scope of his or her authority." *Travelers Indem. Co. v. Bloomington Steel & Supply Co.*, 718 N.W.2d 888, 895-96 (Minn. 2006) (alterations in original) (quoting 3 William Meade Fletcher, *Fletcher Cyclopedia of the*

Law of Private Corporations § 790 (2002)); *see also Brooks Upholstering Co. v. Aetna Ins. Co.*, 276 Minn. 257, 262, 149 N.W.2d 502, 506 (1967).

The city contends that Valley Oil is not entitled to assert an innocent-owner defense because Jason was a "high-ranking corporate employee" who knew of his own illegal use of the Tahoe. At some time after his November 25, 2005 arrest, Jason represented in a conciliation court document that he was president of Valley Oil and represented to the secretary of state that he was CEO of Valley Oil. It is undisputed that there was no factual basis for these representations. And Cheryl testified that she never authorized Jason to represent that he was an officer of the company.

The record supports the district court's finding that Valley Oil had no knowledge of Jason's illicit activities. Both Jason and Cheryl, Valley Oil's sole shareholder, director, and officer, testified that Cheryl had no knowledge of Jason's September 23, 2005 citation for open bottle. Further, the evidence supports the finding that Jason was not acting within the scope of his employment when he was arrested on November 25, 2005. Jason testified, and the city does not contest, that Jason was not working when he was arrested. Thus, Jason's knowledge cannot be imputed to Valley Oil.

The city cites this court's unpublished opinion of *Fred's Tire Co. v. 2002 Chevrolet Silverado*, No. A04-563, 2004 WL 2711022 (Minn. App. Nov. 30, 2004), *review denied* (Minn. Feb. 23, 2005), and the dissent from *United States v. 7326 Highway 45 N.*, 965 F.2d 311, 320–23 (7th Cir. 1992) (Posner, J., dissenting), to support its argument that because Jason was the general manager of Valley Oil, his knowledge of the illegal conduct should be imputed to the company. This court in *Fred's Tire Co.*, 2004

WL 2711022, at *4, and Judge Posner in the dissent from *7326 Highway 45 N.*, 965 F.2d at 321–22, allowed an individual's knowledge to be imputed to the corporation in a forfeiture proceeding. The unpublished case from this court is not precedential. *See Dynamic Air, Inc. v. Bloch*, 502 N.W.2d 796, 800 (Minn. App. 1993).

Further, while the city also relies on the dissent from *7326 Highway 45 N.*, the majority in that case held that, in a forfeiture case, the knowledge of an agent of the corporation could only be imputed to the corporation if the agent was acting within the scope of his employment. 965 F.2d at 315–16. The majority concluded that the knowledge of the corporate officer/shareholder could not be imputed to the corporation because he was acting outside the scope of his employment when he sold illegal drugs. *Id.* at 313, 315–17.

Regardless, both cases are distinguishable because they involved the imputation of the knowledge of a corporate officer/shareholder and a registered agent to the corporation, rather than an employee with no official corporate status, as is the case here. *See id.* at 312; *Fred's Tire Co.*, 2004 WL 2711022, at *2, *4. In addition, the Minnesota Supreme Court has expressly rejected the argument that a person's status in a corporation should automatically operate to impute knowledge to the corporation. *See Travelers Indem. Co.*, 718 N.W.2d at 895–96, 895 n.5 (analyzing the issue in the context of exclusions from insurance coverage for intentional acts). Instead, the supreme court utilized a more nuanced approach by examining whether the individual was acting within the scope of his employment. *Id.* Because Jason was acting outside the scope of his employment when he was arrested, his knowledge of illegal use is not imputed to Valley

Oil, and the district court did not err in finding that Valley Oil was entitled to the innocent-owner defense.

C. The district court did not err by denying the city's request to pierce the corporate veil.

Under a piercing-the-corporate-veil theory, the city argues that Valley Oil is a sham corporation that is not entitled to the innocent-owner defense. The city cites a number of non-Minnesota cases to support its argument that non-shareholders can be reached by piercing the corporate veil. *See Freeman v. Complex Computing Co.*, 119 F.3d 1044, 1051 (2d Cir. 1997); *Laborers' Pension Fund v. Lay-Com, Inc.*, 455 F. Supp. 2d 773, 786 (N.D. Ill. 2006); *Angelo Tomasso, Inc. v. Armor Constr. & Paving, Inc.*, 447 A.2d 406, 411-12 (Conn. 1982); *Fontana v. TLD Builders, Inc.*, 840 N.E.2d 767, 776 (Ill. App. Ct. 2005); *Lally v. Catskill Airways Inc.*, 603 N.Y.S.2d 619, 621 (N.Y. App. Div. 1993). But none of these cases are applicable here because each case involved piercing the corporate veil to hold a non-shareholder liable for corporate debt; not to impute knowledge or to reach a non-shareholder for purposes of a forfeiture.

The city also cites a number of non-Minnesota cases in its reply brief that allow other remedies, such as forfeiture, when piercing the corporate veil. *See United States v. 51 Pieces of Real Property, Roswell, New Mexico*, No. 97-1440, 1998 WL 440439, at *1 (10th Cir. July 17, 1998); *Newton Lake Estates, Inc. v. United States*, No. 97-5137, 1998 WL 165156, at *3 (Fed. Cir. Apr. 10, 1998); *United States v. 900 Rio Vista Blvd.*, 803 F.2d 625, 627-28, 632 (11th Cir. 1986); *Schaefer v. Cybergraphic Sys., Inc.*, 886 F. Supp.

921, 927 (D. Mass. 1994). But in each of those cases, the owner of either the corporation or forfeited property was involved in the activity at issue.

In its order denying the city's motion for a new trial or amended findings, the district court noted that the city provided no legal authority for its assertion that an alter ego of the corporation is not entitled to an innocent-owner defense. Further, the district court stated that piercing the corporate veil is an equitable concept. *See Roepke v. W. Nat'l Mut. Ins. Co.*, 302 N.W.2d 350, 352 (Minn. 1981). Even if the corporate veil were pierced in this instance, it would result in disregarding the corporate structure and assessing the personal liability of Cheryl. Because Cheryl had no knowledge of Jason's illicit activities, she would be entitled to the innocent-owner defense, and the forfeiture would still fail.

Affirmed.