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Missouri Appellate Court Clarifies MUFTA After Complicated Lawsuit

by James P. Martin and Mark A. Olthoff

A recent court case – *May v. Williams*, WD 79651, 2017 WL 3253046 (Mo. Ct. App. Aug. 1, 2017) – heard by Missouri’s Western District Court of Appeals provided insight on the proper procedures and application for piercing claims, particularly in alleged fraudulent transfers.

The Key Takeaways:

- Missouri Uniform Fraudulent Transfer Act (MUFTA) claims allow for a powerful range of available relief (including avoidance, attachment, or injunctive relief), but parties need to either tailor their claims to fit this framework, or seek alternative relief (including piercing claims).
- A plaintiff should make specific allegations related to any piercing claims, including pleading it as a separate equitable cause of action, and seeking specific findings on the from the trial court regarding the piercing issues and claims.
- In a MUFTA case, a plaintiff must clearly and correctly identify the alleged “debtor”, and can only pursue claims against other individuals or entities if it takes steps to pierce the corporate veil.

The *May* decision emphasizes the importance of fully analyzing claims, parties, and available remedies early in the litigation process.

Background of this Specific Case

James May sued James Williams, Wendy Williams and J. Williams Trucking for breach of contract and violations of the Missouri Uniform Fraudulent Transfer Act. As with many piercing and fraudulent transfer cases, this case involved a complicated factual history.

James Williams and Trent Quinn were members and officers of a company called All-Type Construction, which used heavy trucks as part of its hauling business. Williams and Quinn each deposited \$25,000 into All-Type’s checking account in order to establish “capital in hand” and receive approval from their bank for a \$131,000 loan to purchase two dump trucks (a blue truck and a white truck, which both served as collateral for

the loan). All-Type sold the white truck – leaving a balance of \$61,142.52 on the bank loan – and leased a replacement truck from a different lender.

The plaintiff, James May, became involved with All-Type when it wanted to acquire a third truck. With Williams' knowledge and approval, Quinn entered into a two-year lease agreement for May's pickup truck. All-Type never made any payments under the lease.

Quinn then asked May to invest in a dump truck, which May purchased for \$140,000. Once again, with Williams' knowledge and approval, Quinn entered into two written lease agreements with May for the dump truck. All-Type Construction only made four payments on the dump truck, totaling \$10,000.

Soon thereafter, Williams and Quinn had a falling out and stopped communicating with each other. The bank called Williams to complain about All-Type being behind in its loan payments for the blue truck, but Williams did not tell Quinn. Williams and his wife, Wendy, then formed J. Williams Trucking, Inc., which performed work similar to All-Type. Williams applied for a new title for the blue truck, and stated on the title application that J. Williams Trucking was the owner of the truck (with no mention of All-Type). Williams also obtained a loan from a new bank to pay off the amount owing on the blue truck (approximately \$50,000), and took \$20,000 worth of All-Type's tools.

In the meantime, Quinn, on behalf of All-Type Construction, asked May to purchase a trailer for All-Type. May paid for the \$4,000 trailer, and All-Type Construction never made any payments to May for use of the trailer. Eventually, both May's dump truck and trailer were stolen.

All-Type also owed May for a number of other items:

- Checks totaling \$9,100 (payable to All-Type Construction and Quinn) for repairs and other bills
- Insurance for May's pickup truck in the amount of \$17,843.62
- \$12,698.39 of debt that All-Type incurred on May's credit card
- New tires and repairs for May's dump truck, which totaled \$17,374.56
- \$52,500 for unpaid lease payments on the Mack dump truck and the Ford pickup truck and \$3,000 for the pickup truck's taxes, licensing, and registration

Williams also admitted to signing Quinn's named on All-Type's checking account, and paying a total of \$42,400 to himself and his parents.

Ultimately, Quinn, as president of All-Type, assigned all of All-Type's personal property (including all claims against Williams for unauthorized distributions) to May.

The Lawsuit and Trial

May filed a petition seeking damages for breaches of contracts and for violations of the Missouri Uniform Fraudulent Transfer Act, and also sought punitive damages and attorneys' fees and costs.

After a one-day bench trial, the trial court determined May and All-Type had valid written contracts for May's pickup truck and dump truck, and a valid oral contract for the trailer. Because All-Type breached its contracts with May, the Court found All-Type liable for damages in the amount of \$116,516.57.

The court also held that James Williams had made unauthorized distributions to himself, Wendy Williams, and J. Williams Trucking, with "actual intent to hinder, delay, or defraud All-Type Construction's creditors", including May, in violation of the Missouri Uniform Fraudulent Transfer Act.

Specifically, the court found:

- James Williams wrote and signed checks totaling \$42,400 on All-Type's checking account and diverted these funds to himself, his wife and his own corporation
- James and Wendy Williams retained possession the blue truck and company tools for their own use, without ever disclosing these transfers to All-Type or Quinn
- All-Type Construction became insolvent shortly after the transfers were made, and it could not pay May under its contracts.

The trial court concluded that, as a direct and proximate result of these transfers, May was damaged, and that, but for these transfers, All-Type would have been able to pay May the debts owed under the contracts. Accordingly, the circuit court concluded the Williamses and J. Williams Trucking were also jointly and severally liable to May.

The court also awarded punitive damages and attorneys' fees because the Williamses' conduct was unconscionable and



made with the intent to cause May damages.

The Appellate Court's Decision

The Appellate Court affirmed the trial court's judgment in the amount of \$116,516.57 against All-Type Construction. But it reversed the trial court's judgment against James Williams, Wendy Williams and J. Williams Trucking on May's claim on the fraudulent transfer and piercing issues (as well as the related punitive damages and attorneys' fees), finding they did not fit the definition of May's "debtors" under MUFTA.

In a MUFTA claim, the burden of proof is on the creditor to prove a transfer of assets was made: (1) by a **debtor**; and (2) that it was made with an **actual intent to hinder, delay, or defraud** a creditor of the debtor.¹

May argued he fit the definition of a "debtor" because he filed a petition against James Williams, Wendy Williams and J. Williams Trucking claiming they were liable on the claims he made in his petition, and because the circuit court identified the Williamses as debtors.

Under MUFTA, a "creditor" is "a person who has a claim", a "debtor" is "a person who is liable on a claim, and a "claim" is "a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." § 428.009(3), (4) and (6), RSMo 2016. In this case, May did not have a direct right to payment on the truck and trailer contracts from either the Williamses or from J. Williams Trucking. Rather, May's right to payment came from the other party on the contracts: All-Type. Thus, All-Type was the only "debtor" on May's claims, and as an LLC it is ordinarily considered a separate legal entity separate and distinct from its members (who are generally not liable to the entity's debts).²

The appellate court acknowledged this protection for LLC member is not absolute. Specifically, an aggrieved plaintiff can seek to pierce the corporate veil when an LLC or corporation is used for an improper purpose to avoid legal obligations. But May did not seek to pierce the corporate veil, and also did not seek to assert All-Type's claims against Williams, which May had assumed pursuant to Quinn's assignment of All-Type's claims to May. Instead, May set forth his own claims against All-Type for breach of contract, and attempted to hold James

Williams individually liable under MUFTA for May's claims against All-Type.

Unfortunately for May, MUFTA does not sweep so broadly. The Appellate Court held without piercing All-Type's corporate veil, James Williams could not be a debtor for the purposes of a MUFTA claim.

The Appellate Court Distinguished Earlier Case Law

In a prior decision, the Eastern District Court of Appeals held that when a creditor sufficiently pleaded and tried a MUFTA claim for conspiracy to engage in a fraudulent conveyance, the creditor was entitled to relief "regardless of whether he pleaded piercing the corporate veil or alter ego as separate causes of action." But in that earlier case, the individual defendant was the "debtor" on the avoided debt, not the corporate entity. When the court in the earlier case stated it was unnecessary for a creditor to plead piercing the corporate veil as a separate cause of action, it meant the creditor did not have to hold other defendants liable for the debtor's debts (by piercing the corporate veil) because the court could simply void the transfers of the individual debtor's income to these entities.

But May's situation is different, because May did not include any specific piercing allegations, and the trial court did not make any specific piercing findings. **The Appellate Court held without a specific determination regarding the piercing of All-Type's corporate veil, James Williams could not be found to be the "debtor" under MUFTA.**

In addition, the Appellate Court held the trial court went beyond a creditor's available remedies under MUFTA³ because it did not declare avoidance of the transfer, attachment, or injunctive relief.

³ Section 428.039.1 RSMo provides for the following remedies:

- (1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;
- (2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by applicable laws of this state;
- (3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure,
 - (a) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;
 - (b) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or
 - (c) Any other relief the circumstances may require.

Moreover, if a creditor has obtained a judgment on a claim against the debtor, the creditor, upon the court's order, may levy execution on the asset transferred or its proceeds. 428.039.2 RSMo.

¹ § 428.024.1(1) RSMo ("[a] transfer made ... by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made ..., if the debtor made the transfer ... [w]ith actual intent to hinder, delay, or defraud any creditor of the debtor").

² See § 347.057.





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