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SUPREME COURT OF KENTUCKY
NO. 2010-SC-000183-DG

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THOMAS J. SCHULTZ

APPELLANT

VS.

GENERAL ELECTRIC HEALTHCARE
FINANCIAL SERVICES, INC.,
GENERAL ELECTRIC COMPANY, AND
GENERAL ELECTRIC CAPITAL CORPORATION

APPELLEES

APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE DENISE CLAYTON, JUDGE
CIVIL ACTION NO. 04-CI-03093

BRIEF FOR APPELLANT

Respectfully submitted,

Hon. Bruce A. Brightwell
1212 State Street
New Albany, IN 47150
(812) 542-0007

BY: 

BRUCE A. BRIGHTWELL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the following was mailed to the Hon. Denise Clayton, Judge, Jefferson Circuit Court, 700 West Jefferson Street, Louisville, Kentucky 40202; and to Sheryl Snyder, 400 W. Market Street, Suite 3200, Louisville, KY 40202; this the 20th day of April, 2011. I further certify that the record on appeal was never checked out from the Court of Appeals or Supreme Court.


Bruce A. Brightwell

Thomas Schultz states as follows as his Reply to GE's Brief.

First, GE argues that it did not have to prove actual fault under *White v. Winchester Land Development Corp.*, 584 S.W.2d 56 (Ky.App. 1979), but just harm. (Brief, p. 13.) However, GE ignores the fact that the court in *White* never parsed out any difference between "defraud" or "harm" in holding, that in order to satisfy that element of the test, it is necessary to show "the essential elements of fraud, *i.e.* material representation, falsity, scienter, reliance, deception, and injury." *Id.* at 61.

Indeed, that argument doesn't even makes sense, because in any case seeking to pierce the corporate veil, the plaintiff would presumably be "harmed" if it wasn't. Thus, GE's argument that some undefined "harm" is enough would be the exception that swallows the rule.

Further, any inquiry into either "harm" or "injustice", as also argued by GE, would be a fact based determination that could not be decided via a Judgment on the Pleadings.

Second, GE attempts to argue that Schultz's actions satisfied the "badges of fraud", and violated the fraudulent conveyance statute. (Brief, p. 14.) However, GE NEVER made any arguments about Shultz's actions being fraudulent conveyances, meeting the "badges of fraud", or violating the fraudulent conveyance statute either to the trial court or the Court of Appeals. It is black letter law that a party cannot raise new arguments on appeal that were never presented before. Thus, this Court should not consider those arguments on appeal.

Third, GE attempts to sidestep that the third element for piercing the corporate veil that GE had to satisfy under *White, supra*, "that a refusal to disregard the corporate entity would subject the plaintiff to unjust loss". However, this exact situation was addressed by the Court in *White, supra*. There, the court noted that element was not satisfied because the bank did not

obtain individual guarantees on the loan at issue.

Suffice it to say here that the bank's loss was not unjust because it could have secured the loan to The White House, Inc., merely by requiring the Whites to sign those notes in their individual and separate capacities.

Id. GE attempts to “get around” that holding because it alleges Schultz improperly used Intra-Med’s assets for himself. However, that argument ignores the fact that a personal guaranty would still have directly addressed that issue.

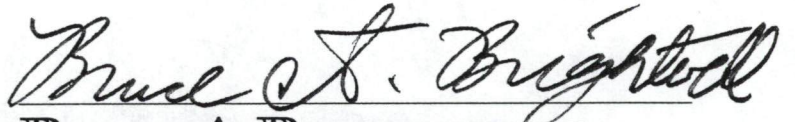
Moreover, GE’s argument ignores the fact that would have to show it suffered an “*unjust* loss”. As stated by *White, supra*, the resolution of that question depends upon “innumerable equities”. Thus, any issue about piercing the corporate veil would be a fact based determination that a court would have to make after trial, and not on a judgment on the pleadings.

Finally, GE argues Shultz was not entitled to any type of credit because of his “mathematical gymnastics” and basically argues that any error on that is okay because “it could have asked for more.” (Brief, pp, 19-20.) However, Shultz submits that GE cannot have it both ways. GE sought to receive a judgment on the pleadings. The resolution of that matter is therefore determined by the pleadings. As shown in his Brief, simply walking through the actual pleadings shows GE received a judgment for too much money.

Even the most basic concepts of Due Process would hold that GE cannot receive a judgment in an amount greater than that shown by its own pleadings on some amorphous theory that “it *could* have been more”. Shultz has a right to know exactly what GE was claiming and how they arrived at that claim. Because the manner that they did that was in error, Shultz is entitled to relief based upon what actually WAS presented, not what COULD have been

presented.

Respectfully submitted:

A handwritten signature in cursive script that reads "Bruce A. Brightwell". The signature is written in black ink and is positioned above a horizontal line.

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