

Butler Law Firm, PLC v. Higgins

Citation: No. CV-17-0119-PR, 2018 WL 1004021 (Ariz. Feb. 22, 2018).

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Author: Justice Brutinel

Joined by: Chief Justice Bales, Vice Chief Justice Pelander, and Justices Timmer, Bolick, Gould, and Lopez.

Facts: This case arose out of a legal malpractice action brought by respondent Winslow Memorial Hospital (the “Hospital”) against petitioner Butler Law Firm, PLC (Butler) and two of its attorneys.¹ The Hospital operates exclusively in Navajo County; Butler and the defendant attorneys reside in Maricopa County.²

In 2013 Butler entered into a legal-representation agreement (the “Agreement”) with the Hospital to draft an employment contract.³ The Agreement was explicit as to the legal services that Butler was to provide, but it was silent as to where Butler was to perform those services.⁴ When the relationship between Butler and the Hospital soured in 2016, the Hospital filed suit in Navajo County Superior Court.⁵ Butler moved to transfer, arguing that Arizona’s venue statute⁶ rendered venue improper in Navajo County because all of the defendants reside in Maricopa County.⁷

Procedural history: The trial court denied Butler’s motion, concluding that A.R.S. §§ 12-401(5) and 12-401(18) made venue proper in Navajo County.⁸ Section 12-401(5) generally permits persons who have contracted to perform services in one county to be sued in that county.⁹ The Trial court reasoned that because the Agreement explicitly required Butler to represent the Hospital, a business that conducts its operations in Navajo County, venue was proper under § 12-401(5).¹⁰ Section 12-401(18) generally permits corporations to be sued in any county where facts giving rise to the suit occurred.¹¹ The Trial court reasoned that an LLC is a corporation because it is subject to the corporate veil piercing doctrine¹², and thus, venue was proper under § 12-401(18).¹³

¹ Butler Law Firm, PLC v. Higgins, No. CV-17-0119-PR, 2018 WL 1004021, at *1 (Ariz. Feb. 22, 2018).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ ARIZ. REV. STAT. ANN. § 12-401 (2017).

⁷ Butler Law Firm, PLC, 2018 WL 1004021, at *1.

⁸ *Id.*

⁹ See § 12-401(5).

¹⁰ *Id.*

¹¹ See § 12-401(18).

¹² Piercing the corporate veil is a doctrine that allows courts to hold personally liable the otherwise immune corporate directors and officers for the corporation’s wrongful acts. 18 C.J.S. *Corporations* § 14 (2018). Put simply, “to ‘pierce a corporate veil’ means to disregard its corporate formalities.” *Id.*

¹³ Butler Law Firm, PLC, 2018 WL 1004021, at *1.

Butler petitioned for special action, challenging the trial courts order.¹⁴ The Arizona Court of Appeals declined special-action review.¹⁵ The Arizona Supreme Court granted review to consider whether Butler contracted to perform services in Navajo County and whether an LLC is a corporation for purposes of Arizona’s venue statute.¹⁶

Issue: Section 12-401 of the Arizona Revised Statutes provides generally that “[n]o person shall be sued out of the county in which such person resides” unless a statutory exception applies.¹⁷ Here, the Hospital argues that two exceptions apply, § 12-401(5)—permitting suit where the defendant has contracted to perform services—and § 12-401(18)—permitting suit against a corporation in the county where facts giving rise to the lawsuit arose. Did the trial court err when it found that venue was proper under these provisions?

Holding: Yes, the Agreement did not require performance in Navajo County either explicitly or implicitly, and Butler Law, PLLC is not a corporation for purposes of Arizona’s venue statute.

Disposition: The trial court’s order denying Butler’s motion for a change in venue is reversed, and the case is remanded for further proceedings.¹⁸

Rule: For venue to be proper under A.R.S. § 12-401(5), the contract itself must explicitly specify or necessarily imply performance in a county other than where the defendant is domiciled.¹⁹ And limited liability companies are not corporations for purposes of A.R.S. § 12-401(18).²⁰

Reasoning:

- **General Rules of Construction for Arizona’s Venue Statute:** Because interpreting Arizona’s venue statutes is a matter of law, the court reviewed the trial courts order de novo.²¹ The Supreme Court began by laying out general rules of construction for A.R.S. § 12-401—Arizona’s general venue rule.²² Section 12-401 provides that “[n]o person shall be sued out of the county in which such person resides” unless a statutory exception applies.²³ Exceptions to the general venue rule are to be narrowly construed, the court explained.²⁴ And although venue is established by construing the pleadings liberally in favor of the plaintiff, “convenience to the defendant is . . . the first consideration in establishing venue.”²⁵

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ ARIZ. REV. STAT. ANN. § 12-401; *see also Butler Law Firm, PLC*, 2018 WL 1004021, at *2.

¹⁸ *Butler Law Firm, PLC*, 2018 WL 1004021, at *5.

¹⁹ *Id.* at *2.

²⁰ *Id.* at *4–5.

²¹ *Id.* at *2

²² *Id.*

²³ ARIZ. REV. STAT. ANN. § 12-401 (2017); *see also Butler Law Firm, PLC*, 2018 WL 1004021, at *2.

²⁴ *Butler Law Firm, PLC*, 2018 WL 1004021, at *2.

²⁵ *Id.*

- **Interpreting A.R.S. § 12-401(5):** The court took the Hospital’s arguments in turn, beginning with § 12-401(5). That section states: “[p]ersons who have contracted in writing to perform an obligation in one county may be sued in such county or where they reside.”²⁶ The Hospital argued that the “Agreement was a written contract to perform legal services in Navajo County because the Agreement expressly referred to representation of the Hospital.”²⁷ But the Supreme Court disagreed, noting that § 12-401(5) does not apply unless the contract, either implicitly or explicitly, requires the defendant to perform there.²⁸ The Agreement did not specify a place of performance nor did it necessarily require Butler to perform in Navajo County.²⁹ Thus, the court found § 12-401(5) to be inapplicable.³⁰
- **Interpreting A.R.S. § 12-401(18):** The court turned to the second exception; § 12-401(18) states in relevant part that “[a]ctions against railroad companies, insurance companies, telegraph or telephone companies, joint stock companies and other corporations may be brought in any county in which the cause of action, or a part thereof, arose”³¹ Despite the statute’s lack of direct reference to LLCs, the Hospital argued that an LLC is an “other corporation” under the statute.³² Referring to the legislative history of Title 10 of the Arizona Revised Statutes—dealing with corporations—the court found no definition of corporation included LLC.³³ More importantly, the court found that LLC statute’s placement in the overall statutory scheme, “reflect[ed] the legislature’s intent to create a new form of unincorporated business entity.”³⁴ LLCs are more akin to partnerships than to corporations, the court explained.³⁵ Finally, the Supreme court disagreed with the trial court’s reasoning that because LLCs are considered corporations under the veil-piercing doctrine, LLCs are corporations for venue purposes.³⁶ Venue and veil piercing serve two very different policy functions, the Supreme Court noted.³⁷ What constitutes a corporation under one is not necessarily a corporation under the other. Thus, the court also found § 12-401(5) to be inapplicable.³⁸

²⁶ § 12-401(5); *see also Butler Law Firm, PLC*, 2018 WL 1004021, at *2; *Miller Cattle Co. v. Mattice*, 298 P. 640, 642 (Ariz. 1931) (“[I]f the contract be in writing, and must necessarily be executed in a county different from that of the domicile of the party contracting, then, for breach of the contract, he may be sued in either of these counties.”).

²⁷ *Butler Law Firm, PLC*, 2018 WL 1004021, at *2.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at *3

³¹ § 12-401(18); *see also Butler Law Firm, PLC*, 2018 WL 1004021, at *3.

³² *Butler Law Firm, PLC*, 2018 WL 1004021, at *3.

³³ *Id.*

³⁴ *Id.* at *4

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at *5.