

U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-2657

PENNSYLVANIA MANUFACTURERS' ASSOCIATION INSURANCE COMPANY; PMA
MANAGEMENT CORP.,
Appellants

v.

ESHAI CORPORATION, dba Courier Distribution Systems LLC; COURIER DISTRIBUTION
SYSTEMS LLC; USMAN ESHAI, Individually and as a member of Eshai Corporation, d/b/a
Courier Distribution Systems, LLC a/k/a Uthman Eshai; ALI ESHAI, Individually and as a
member of Eshai Corporation, d/b/a Courier Distribution Systems, LLC; NAJEEB ESHAI,
Individually and as a member of Eshai Corporation, d/b/a Courier Distribution Systems,
LLC

Appeal from U.S. District Court, E.D. Pa.
Judge Gerald A. McHugh, No. 2:21-cv-01892

Before: KRAUSE, FREEMAN, and ROTH, *Circuit Judges*
Submitted July 6, 2026; Decided October 8, 2026

NONPRECEDENTIAL OPINION*

KRAUSE, *Circuit Judge*. In this case, the District Court granted summary judgment in favor of Appellants Pennsylvania Manufacturers' Association Insurance Company (PMAI) and PMA Management Corp., ordering PMAI's former insured, Eshai Corporation, to pay over \$8.6 million in damages for breach of contract. When Eshai found itself unable to pay, the District Court denied PMAI's ensuing motion to pierce the corporate veil and render Eshai's shareholders—members of the Eshai family—personally

* This is not an opinion of the full Court and, under 3d Cir. IOP 5.7, is not binding precedent.

liable under the “alter ego theory.” *Miners, Inc. v. Alpine Equip. Corp.*, 722 A.2d 691, 695 (Pa. Super. Ct. 1998) (“The alter ego theory is applicable only where the individual or corporate owner controls the corporation to be pierced and the controlling owner is to be held liable.” (emphases omitted)). PMAI sees this as error, but we do not, so we will affirm.

I. DISCUSSION

The District Court went above and beyond its duty as factfinder in assessing Eshai’s finances and business model. After holding a two-day evidentiary hearing, featuring both lay and expert testimony, the District Court reasonably concluded that PMAI failed to demonstrate it was entitled to pierce the corporate veil by clear and convincing evidence. Below, we discuss the propriety of the clear-and-convincing-evidence standard before turning to the merits of PMAI’s veil-piercing claim.

A. The District Court Did Not Err in Requiring a Showing of Clear and Convincing Evidence

PMAI first argues that the District Court erred by requiring PMAI to establish its entitlement to veil-piercing by clear and convincing evidence. That requirement, however, appears consistent with Pennsylvania law, which governs here.¹

¹ The District Court had diversity jurisdiction under 28 U.S.C. § 1332. We accordingly apply state law, “forecast[ing] the position the [Pennsylvania Supreme Court] would take” as to any unresolved questions of state law. *Clark v. Mod. Grp. Ltd.*, 9 F.3d 321, 326 (3d Cir. 1993). We exercise appellate jurisdiction pursuant to 28 U.S.C. § 1291, reviewing factual findings for clear error and legal issues *de novo*. See *Clientron Corp. v. Devon IT, Inc.*, 894 F.3d 568, 575 (3d Cir. 2018).

Though neither the Pennsylvania Supreme Court nor the Pennsylvania courts of appeals have addressed the appropriate evidentiary standard for veil-piercing claims,² the Pennsylvania Supreme Court has emphasized the “strong presumption . . . against piercing the corporate veil.” *Lumax Indus., Inc. v. Aultman*, 669 A.2d 893, 895 (Pa. 1995). Pennsylvania courts also apply “the general rule that the corporate entity should be recognized and upheld, unless specific, *unusual circumstances* call for an exception.” *Mortimer v. McCool*, 255 A.3d 261, 278 (Pa. 2021) (emphasis added) (citation modified). As the District Court reasoned, this suggests the Pennsylvania courts would endorse a clear-and-convincing-evidence standard in the veil-piercing context.

In addition, although “[f]raud in its narrow sense need not be shown,” *id.*, the party seeking to pierce the corporate veil must nonetheless demonstrate exceptional circumstances—that adherence to the corporate form would promote “fraud or injustice”—to invoke the court’s equitable authority, *id.* at 287. And fraud must be shown by clear and convincing evidence under Pennsylvania law. *See Hosler v. Tweedlie*, 306 A.3d 361, 373 (Pa. Super. Ct. 2023). This also militates in favor of a clear-and-convincing-evidence standard.

Indeed, we followed the same rationale in concluding that the federal alter ego doctrine—which is “substantially similar” to Pennsylvania’s alter ego doctrine, *Trinity*

² One state trial court summarily stated that the standard is preponderance of the evidence, but it did so without analysis and based entirely on a federal district court opinion rather than state-court authority. *MCI WorldCom Commc’ns Inc. v. Atiyeh*, 82 Pa. D. & C.4th 414, 425 (Ct. of C.P., Lehigh Cnty. 2006), *aff’d sub nom.*, 954 A.2d 48 (Pa. Super. Ct. 2008), *appeal denied*, 963 A.2d 471 (Pa. 2008).

Indus., Inc. v. Greenlease Holding Co., 903 F.3d 333, 365 (3d Cir. 2018)—also requires a showing of clear and convincing evidence because it has “elements of fraud theory” which plaintiffs must normally establish by clear and convincing evidence, *Trs. of the Nat’l Elevator Indus. Pension, Health Benefit & Educ. Funds v. Lutyk*, 332 F.3d 188, 192 (3d Cir. 2003) (citation modified); *see also id.* at 194 (“[O]ur test does not require proof of actual fraud as a prerequisite for piercing the corporate veil . . .”). The District Court therefore did not err in adopting the clear-and-convincing-evidence standard.³

B. PMAI Was Not Entitled to Pierce the Corporate Veil

As we have noted, “there is a strong presumption . . . against piercing the corporate veil” under Pennsylvania law. *Lumax Indus., Inc.*, 669 A.2d at 895. Veil-piercing is permitted only when “the evidence . . . show[s] that the corporation was nothing more than a sham used to disguise the shareholders’ use of its assets for their own benefit,” resulting in fraud or injustice. *Clientron Corp.*, 894 F.3d at 576 (citation modified); *see generally id.* (applying Pennsylvania law). To meet that high threshold, a movant must demonstrate (1) “unity of interest and ownership [between] the separate personalities of the corporation and the individual” such that the individual “no longer exist[s],” and (2) that “adherence to the corporate fiction under the circumstances would sanction fraud or promote injustice.” *Mortimer*, 255 A.3d at 286-87 (citation modified). To determine whether a movant has

³ Even applying the more favorable preponderance-of-the-evidence standard, PMAI failed to establish a likelihood that it would have prevailed. *Cf. Sealed Appellee 1 v. Sealed Appellant 1*, 767 F.3d 418, 424 (5th Cir. 2013) (reviewing for harmless error where the district court wrongly required proof by a preponderance of the evidence, rather than by clear and convincing evidence).

made that showing, Pennsylvania courts often consider such factors as “undercapitalization, failure to adhere to corporate formalities, substantial intermingling of corporate and personal affairs,” and whether the “corporate form” was used “to perpetrate a fraud.” *Lumax Indus., Inc.*, 669 A.2d at 895 (citation modified); *see also In re Dravo LLC-Derivative Claims Against Carmeuse Lime, Inc.*, 357 A.3d 104, 119 (Pa. 2026) (observing that the *Lumax* considerations remain relevant under the *Mortimer* two-prong test). Here, the District Court correctly concluded that, on balance, these factors counseled against piercing Eshai’s corporate veil. We address each in turn.

i. Undercapitalization

The District Court, after conducting a meticulous review of Eshai’s financial history, rejected PMAI’s argument that Eshai was undercapitalized. Notably, it found that a period of “rapid growth” between 2015 and 2020 had caused Eshai “persistent cash flow issues due to increased payroll costs, vehicle expenses, and high interest loan repayments,” and that Eshai had wound down its operations due to the unexpected loss of its sole client, Amazon. *Pa. Mfrs.’ Ass’n Ins. v. Eshai Corp. (PMAI)*, No. 2:21-cv-01892, 2025 WL 2250000, at *2 (E.D. Pa. Aug. 5, 2025). PMAI challenges neither of these findings and, accordingly, we perceive no error in the District Court’s conclusion that Eshai’s insufficient capital evinced a risky business strategy, not wrongdoing.

PMAI reiterates on appeal its argument that Eshai’s shareholder disbursements in 2019—totaling \$2.1 million—were a wrongful diversion of corporate funds from Eshai’s creditors. But the disbursements followed Eshai’s sale of a separate corporate entity, which generated \$3.8 million in capital gains and compensated shareholders for a company they

invested “ten years of work into.” *PMAI*, 2025 WL 2250000 at *5 (citation modified). In addition, the disbursements were issued during a year when Eshai was flush with cash (including \$6 million in capital gains and book income), and after three years of relatively modest disbursements. We therefore agree with the District Court that these disbursements were not unreasonable.

ii. Failure to Adhere to Corporate Formalities

A corporation’s failure to observe practices and procedures typical of a corporate entity may also militate in favor of veil piercing. Here, as the District Court observed, Eshai lacked many of those formalities. Nonetheless, a lack of formalities is pertinent to veil piercing only when “associated with abuse of the corporate form.” *Mortimer*, 255 A.3d at 276. The District Court determined that was not the case here. Instead, as the District Court reasoned, the lack of formalities in a closely-held corporation like Eshai is relatively inconsequential and thus did not weigh significantly in PMAI’s favor.

iii. Substantial Intermingling of Corporate and Personal Affairs

Before piercing the corporate veil, Pennsylvania courts examine the affairs of the corporation and the individual for evidence not merely of intermingling, but of “*substantial intermingling*.” *Mortimer*, 255 A.3d at 276 (citation modified). The District Court here did just that, taking note of instances of intermingling in Eshai’s history but concluding that these instances were not substantial. On appeal, PMAI focuses us on a series of Eshai’s transactions that benefited members of the Eshai family: purchasing luxury cars for personal use, paying salaries to family members who did not work for the corporation, and

funding some personal expenses.⁴ But we agree with the District Court that the money spent on luxury cars was a relatively insignificant sum when compared to Eshai's revenue and profit. The shareholder salaries and personal expenses were, likewise, not substantial in the context of Eshai's finances. In any event, these limited instances of intermingling are not enough to demonstrate that Eshai was "nothing more than a sham." *Clientron Corp.*, 894 F.3d at 576 (citation modified).

iv. *Use of the Corporate Form to Perpetrate Fraud*

Finally, PMAI argues that Eshai paid its shareholders an additional \$3.6 million in distributions during 2020, some of which were issued after Eshai lost the Amazon contract. But the District Court, after hearing from expert witnesses, reasonably concluded that PMAI had not supported this allegation. Indeed, PMAI's own expert witness admitted on cross-examination that the \$3.6 million figure could have included not only distributions to Eshai's shareholders, but also various other transactions that were for Eshai's benefit.⁵ So, on this record, the District Court reasonably concluded that PMAI failed to offer

⁴ PMAI also points to the fact that members of the Eshai family took out a personal loan on behalf of the corporation and that Eshai later paid off that loan using its capital gains. **See Opening Br. 33; App. 155-56.** But by taking out debt in their own names, the shareholders made themselves personally liable for that portion of the corporation's debt. That is not evidence of abuse.

⁵ PMAI also argues that these alleged disbursements were improper because Eshai had decided by December 2019 to "slow pay" an outstanding premium invoice. Opening Br. 36. But the District Court reasonably found that this decision was driven not by fraud but prudence: Eshai had limited capital and needed to pay a significant deposit to secure new coverage, "which Eshai needed to operate." *PMAI*, 2025 WL 2250000 at *6 n. 15.

competent evidence of whether and to what extent the distributions were for shareholders' personal gain.⁶

* * *

In short, Eshai arguably made several risky and imprudent business decisions, but for the reasons ably explained by the District Court, those decisions do not clear the high bar necessary to pierce the corporate veil under Pennsylvania law.

II. CONCLUSION

For the foregoing reasons, we will affirm the District Court's judgment.

⁶ PMAI argues for the first time on appeal that it is entitled to restitution under the doctrine of unjust enrichment. Because PMAI did not raise a claim for unjust enrichment in its complaint, this argument is forfeited. *See Murray v. Com. Union Ins. Co.*, 782 F.2d 432, 437 (3d Cir. 1986).