2011 IL App (2d) 101225-U
No. 2-10-1225
Order filed September 12, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

CONSERV FS, INC.	)	Appeal from the Circuit Court
	)	of De Kalb County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 09-L-37
	)	
VON BERGEN TRUCKING, INC.	)	Honorable
	)	Kurt P. Klein
Defendant-Appellee.	)	Judge, Presiding.

PRESIDING JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

Held: In a supplementary proceeding to discover the assets of the judgment debtor, a judgment creditor cannot seek to pierce the corporate veil of limited liability protecting a shareholder and a related corporation. Therefore, the emergency motion to turnover funds and pierce the corporate veil was properly denied. Additionally, this court may not reach judgment creditor's appellate argument concerning the continuation exception to corporate successor non-liability because this argument was not raised in the trial court.

¶ 1 Following a hearing in supplementary proceedings to discover assets of the judgment debtor (defendant), the court denied plaintiff's emergency motion to turnover funds and pierce the corporate veil. Because plaintiff did not raise its argument in the proper proceeding, we affirm the trial court.

¶ 2 I. BACKGROUND

¶ 3 Defendant, Von Bergen Trucking (VB), operated a small hauling operation focused primarily on the delivery of grain to storage elevators. Ray Von Bergen managed VB and also drove trucks for VB. VB owned two semi-trucks, which it used in its deliveries, and it also contracted with another truck operator (Tim McGinnis) from time to time.

¶ 4 Plaintiff, Conserv FS, Inc., is a supplier to customers in the agricultural industry. In this case, plaintiff supplied diesel fuel and gasoline to VB during 2006, 2007, and 2008. VB then kept the fuel in storage tanks on its property.

¶ 5 In late 2008, Conserv and VB ceased doing business. VB contended that it had been overcharged for fuel, and Conserv contended that it had not been paid. This dispute culminated in the underlying lawsuit, wherein, on July 22, 2010, the court entered a $68,988.19 judgment (plus costs and fees) against VB.

¶ 6 VB never made payment on the judgment, and, as a result, Conserv prepared for supplementary proceedings to discover the assets of VB. Conserv issued to three grain storage elevator companies citations to discover assets to determine whether any of the grain storage companies were holding money or property owed to VB. One of the grain storage companies, DeLong Co., informed Conserv that Ray told it (DeLong) to stop making payments to VB and to make future payments to "*Ray* Von Bergen Trucking, Inc." (RayVB). Additionally, DeLong told Conserv that it did, in fact, owe RayVB "a considerable sum."

¶ 7 On October 13, 2010, based on DeLong's information, Conserv filed the emergency motion against VB to turnover funds and pierce the corporate veil at issue in this appeal. In its motion, Conserv requested that the court find RayVB to be the alter ego of VB, to find that any asset owned by RayVB was actually an asset of VB, and to enter judgment against RayVB and Ray personally in the amount of $68,988.19 (plus costs and fees).

¶ 8 On October 14, 2010, at a status hearing on the motion, VB complained that there had not yet been any citation proceedings against Ray to see whether Ray (or RayVB) possessed any of VB's assets (a typical topic of supplementary proceedings to enforce a judgment). Instead, VB noted, Conserv had filed an "unverified complaint" to pierce the corporate veil, and it was difficult for VB to ascertain from the pleading "which corporate veil they were trying to pierce," *i.e.*, the veil protecting Ray individually or the veil protecting RayVB.

¶ 9 On October 19, 2010, the trial court held a hearing on the emergency motion to pierce the corporate veil. At the hearing, Conserv called all the witnesses, and VB cross-examined. Ray's mother, Florence Von Bergen, testified that she started VB in February 2006, with an initial capitalization of $60,000. She started the company because she wanted to provide a job opportunity for her grandson, Amos. However, Amos proved to have no interest in trucking, and he left the company. Shortly thereafter, still within six months of VB's inception, Ray became involved with VB.

¶ 10 In VB's "Articles of Incorporation," Florence and Ray are listed as the sole shareholders, each holding 500 shares. Florence is listed as the president and Ray is listed as the vice president. However, Florence conceded that they adhered to virtually no corporate formalities. They had no corporate book, annual meetings, formal minutes, or other written records to document the actions

of shareholders or directors. Florence operated under the belief that the only activity required of a corporation was "to make money."

¶ 11 Initially, Florence acted as the secretary (answering the phone, doing paperwork), and Ray did the other work (hiring drivers, trucking, *et cetera*). However, as time went on, Ray began doing the paperwork as well. Florence had not drawn an income from VB in several years. Instead, her income came from social security. When asked the judgment amount against VB, she stated that she had "no idea."

¶ 12 Ray testified consistent with Florence as to the formation of VB. Additionally, Ray stated that, as the years went on, Ray began to take over the VB paperwork responsibilities. VB "ceased operations" in July 2010, but it did not officially dissolve.

¶ 13 In August 2010, Ray started RayVB. Ray stated that he started RayVB because Florence wanted to get out of the trucking business. Ray opened an account at the bank for RayVB with an initial capitalization of $50, written from VB's checking account. RayVB continued to deliver grain to VB's customers. RayVB used the same two trucks that VB had previously used. However, RayVB "leased" the trucks from VB. There was no written lease between RayVB and VB; Ray testified that the lease between RayVB and VB was an "oral agreement." RayVB did not submit lease payments to VB. Rather, RayVB made the lease payments directly to *VB's* truck lessor, in the exact amount VB owed.

¶ 14 Additionally, VB's subcontractor, Tim McGinnis, continued to deliver grain with two trucks that he (McGinnis) leased. In exchange for allowing McGinnis to run his business under RayVB's account, McGinnis gives RayVB 10% of his profit. Ray did not testify that RayVB's arrangement with McGinnis was any different than VB's arrangement with McGinnis had been.

¶ 15 Ray confirmed that DeLong had been a long-term customer of VB. VB did business with DeLong through Summer 2010. Then, Ray instructed DeLong to "change accounts" and make all payments to RayVB rather than VB. Finally, Ray stated that his entire personal income comes from the trucking industry—first with VB and then with RayVB.

¶ 16 Sheila Appel-Alexander testified that she was a tax accountant at American National Bank. She handled the bank statements for VB and, now, RayVB. She created annual income and expense reports for each company. Looking at VB's 2010 profit and loss report (exhibit 3), Appel-Alexander explained that the report contained no information past August 2010 because VB "stopped existence" beyond August 2010. VB has not received any income or paid any expenses since August 2010.

¶ 17 Looking to RayVB's 2010 profit and loss report (exhibit 4), Appel-Alexander explained that there are no account records prior to July 2010 because RayVB had not yet incorporated. From August through the date of hearing (October 19, 2010), RayVB had an income of $82,000. RayVB's total expenses through the date of hearing were $42,765 (including Ray's personal salary).

¶ 18 Looking to VB's 2010 balance sheet (exhibit 6), Appel-Alexander testified that it did not show whether any profit distributions to shareholders were made. Instead, it showed loan payments due to shareholders. Appel-Alexander stated that "shareholders" "may" have received money out of VB in the form of loan payments. Florence definitely received money in the form of loan payments, but Appel-Alexander could not state the amount with certainty. During cross examination, Appel-Alexander testified consistent with Ray that RayVB "rents" trucks from VB, but that the rent is "paid directly to the [lessor] of the trucks." Therefore, no income shows up on the profit and loss statement VB. However, during cross-examination by VB, Appel-Alexander stated

that she *will* treat the rental payments made directly to the ultimate lessor of the trucks as income to VB. The income will not be taxed because it is a third party (*i.e.*, RayVB) paying an outstanding debt. Also, the income will be offset by anticipated depreciation to VB.[1]

¶ 19 Looking to RayVB's 2010 balance sheet (exhibit 5), Appel-Alexander testified that Ray had received $16,000 in profit distributions. During cross-examination, Appel-Alexander explained that RayVB's total equity (current assets verses current liabilities) was $23,454. This appears to be primarily based on net income, minus profit distributions.

¶ 20 Finally, Stanley Boehne testified that he worked for Conserv and that, prior to the parties' dispute, he had handled VB's fuel account. He continues to see VB trucks at various grain facilities, even though VB claims to have ceased operating. According to Boehne, as of the day prior to hearing, the logo on the trucks was exactly the same, *i.e.*, "Von Bergen Trucking." However, VB submitted into evidence a photo of the trucks, which showed the new logo to be "Leased to Ray Von Bergen Trucking." The words "Leased to Ray" were added in smaller lettering above the original logo. VB submitted that the words were added one month prior to the hearing, but it conceded that the photo was taken the day of the hearing.

¶ 21 The trial court took the matter under advisement. On November 9, 2010, the trial court stated in total and without further explanation:

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[1] Although Appel-Alexander did not testify to it, we note that the liabilities section of VB's balance sheet (exhibit 6), dated through August 31, 2010, does not show the July 22, 2010, $68,988.19 judgment against it.

> "You know I revisited my notes, transcripts, your arguments. I can understand your frustration. He's definitely getting away with something. But the law allows him to get away with something. Your motion is denied."

This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 On appeal, Conserv presents two arguments: (1) the trial court erred in denying its motion to pierce the corporate veil because Conserv set forth evidence to satisfy Illinois' two-prong test (*Fontana v. TLD Builders*, 362 Ill. App. 3d 491, 500 (2005)); and (2) RayVB should be held liable for the debts of VB under the continuation exception to the traditional rule of successor corporate nonliability (*Vernon v. Schuster*, 179 Ill. 2d 338, 346 (1997)).

¶ 24 As to Conserv's corporate veil argument, VB responds that a judgment creditor (*i.e.*, Conserv) may not bring a claim to pierce the corporate veil in supplementary proceedings to collect assets of the judgment debtor. *Pyshos v. Heart-Land Development Co.*, 258 Ill. App. 3d 618, 625 (1994). VB also argues that, on the merits, the trial court did not err in refusing to pierce the corporate veil. As to Conserv's successor nonliability argument, VB responds that Conserv has forfeited the argument because it did not raise it in the trial court, and, in any case, the argument is not applicable to the instant case. For the reasons that follow, we agree with VB.

¶ 25 A. Piercing the Corporate Veil

¶ 26 At the trial court level, Conserv sought to pierce the veil of limited liability by arguing both that: (1) *VB* was a sham corporation for Ray individually, seeking judgment against Ray; and (2) *RayVB* was a sham corporation for VB, seeking to put RayVB on the hook for VB's liabilities (*i.e.*,

the $68,988 judgment). The trial court rejected both, albeit without precision. On appeal, Conserv drops its first argument, and focuses on the second: whether RayVB was a sham corporation for VB.

¶ 27 A corporation is a legal entity that exists separately and distinctly from its shareholders, officers, and directors, who generally are not liable for the corporation's debts. *Fontana*, 362 Ill. App. 3d at 500. Doing business as a corporation insulates shareholders from unlimited liability for corporate activities. *Id*. Limited liability generally exists even when the corporation is closely held or has a single shareholder. *Id*. However, a court may disregard the corporation and "pierce the veil" of limited liability where the corporation is merely the alter ego or business conduit of another person *or entity*. *Id*. The doctrine of piercing the corporate veil imposes liability on the person or entity that uses a corporation merely as an instrument to conduct that person's *or entity's* business. *Id*. Such liability arises from fraud or injustice perpetrated on third persons dealing with the corporation. *Id*.

¶ 28 We recognize Conserv's frustration in not yet receiving its judgment due against VB. However, we cannot reach the merits of Conserv's corporate-veil argument because an action to pierce the corporate veil to hold *RayVB* liable for the judgment against VB is not properly brought, as it was here, in supplemental proceedings to enforce the judgment against VB. See, *e.g.*, *Miner v. Fashion Enterprises, Inc.*, 342 Ill. App. 3d 405, 414-15 (2003); *Peetoom v. Swanson*, 334 Ill. App. 3d 523, 527-29 (2002); *Pyshos*, 258 Ill. App. 3d at 624; *Misch v. Lange*, 232 Ill. App. 3d 1077, 1080 (1992).

¶ 29 We must keep in mind that the instant action is against VB, not RayVB. Conserv's instant petition to turnover funds and pierce the corporate veil is appropriately characterized as a supplementary proceeding to discover (and collect) the assets of a judgment debtor. See *Pyshos*, 258

Ill. App. 3d at 619-20. The *only relevant inquiries* in supplementary proceedings are: (1) whether the judgment debtor (*i.e.*, VB) is in possession of assets that should be applied to satisfy the judgment; or (2) whether a third party is holding assets of the judgment debtor that should be allowed to satisfy the judgment. *Id*. at 623.

¶ 30 In contrast, an action to pierce a corporate veil does not require any allegation that the assets of the judgment debtor corporation are in the hands of another person or entity, and it is actually a much broader inquiry. *Id*. Illinois courts employ a two-prong test to determine whether to pierce the corporate veil: (1) unity of interest and ownership is such that the separate personalities of the corporation and the other person or entity no longer exist; *and* (2) adherence to the fiction of a separate corporate existence would sanction a fraud, promote injustice, *or* promote inequitable consequences. *Fontana*, 362 Ill. App. 3d at 500. As to the "unity of interest and ownership" prong, the court should examine many factors, none of which are dispositive, including: (1) inadequate capitalization; (2) failure to observe corporate formalities; (3) failure to issue stock; (4) nonpayment of dividends; (5) nonfunctioning of the other officers or directors; (6) absence of corporate records; (7) insolvency of the debtor corporation; (8) commingling of funds; (9) diversion of assets from the corporation by or to a shareholder or other person or entity to the detriment of creditors; (10) failure to maintain arm's length relationships among related entities; and (11) whether, in fact, the corporation is a mere facade for the operation of the dominant shareholders. *Id*. at 503; see also *Fuimetto v. Garrett Enterprises*, 321 Ill. App. 946, 959 (2001), and *In re Estate of Wallen*, 262 Ill. App. 3d 61, 69 (1994). Allegations concerning these elements must appear in a complaint to pierce the corporate veil. *Pyshos*, 258 Ill. App. 3d at 624. In summation up to this point, what must be

alleged to pierce the corporate veil does not fall within the scope of what may be heard in supplementary proceedings to discover the assets of the judgment debtor. *Id.*

¶ 30 Accordingly, a judgment creditor (*i.e.*, Conserv) who believes a judgment debtor (*i.e.*, VB) is evading payment on a judgment through the fiction of a corporate entity is left with two options: (1) the creditor may use supplementary proceedings to discover whether a third party (*i.e.*, Ray or RayVB) is holding assets of the judgment debtor; *or* (2) the creditor may file a *new* action to pierce the corporate veil to hold Ray or RayVB liable for the judgment against VB. See *Miner*, 342 Ill. App. 3d 414. A new action, as opposed to a supplementary proceeding, is the proper way to try to pierce the corporate veil because a money judgment is a new and distinct obligation of the debtor corporation that differs in nature and essence from the original claim upon which the judgment was based (*i.e.*, breach of contract). *Id.* The idea that a request to pierce the corporate veil should be brought in a new complaint was recently explained in *Peetom* (334 Ill. App. 3d at 523). There, the defendant argued that an action to collect a negligence judgment was subject to the two-year statute of limitations governing personal injury actions. *Peetoom*, 334 Ill. App. 3d at 525. The court rejected this argument, indicating that the plaintiff's negligence *judgment* became a new and distinct obligation of the defendant corporation, and that a new action to pierce the corporate veil (so as to impose liability on individual shareholders and directors) would generally be governed by the seven-year limitations period for enforcing judgments. *Id*. at 528.

¶ 31 Additionally, we find *Pyshos*, 258 Ill. App. 3d 618, instructive. There, plaintiff Pyshos obtained a $20,000 judgment in a breach-of-contract case against defendant corporation Heart-Land. *Id*. at 619. Pyshos then initiated supplementary proceedings to discover the assets of Heart-Land. In the course of preparing for the supplementary proceedings, Pyshos deposed Heart-Land's only two

shareholders and directors, Harvey Koloms and William McLinden. Pyshos discovered facts that led him to file a petition for turnover and to pierce the corporate veil. Pyshos' petition alleged that Heart-Land and shareholders Koloms and McLinden ignored corporate formalities, and he sought to hold Koloms and McLinden personally liable for the $20,000 judgment against Heart-Land. *Id*. at 624. The trial court relied upon this allegation to pierce the corporate veil. *Id*. at 625.

¶ 32 However, the appellate court reversed, stating that it is improper to pierce the corporate veil in supplementary proceedings to discover assets against the judgment creditor. *Id*. The court reasoned, as stated above, that what must be alleged to pierce the corporate veil does not fall within the scope of what may be heard in the supplementary proceedings. *Id*. at 624. First, the court remanded for consideration of only those issues that fall within the scope of what may be heard in supplementary proceedings, *i.e.*, whether Koloms and McLinden personally possessed the assets of Heartland. Second, the court stated that Pyshos *could* still file a *new* complaint (including Koloms and McLinden) to pierce the protective corporate veil and hold Koloms and McLinden personally responsible. *Id*.

¶ 33 The facts in *Pyshos* are not unlike those in the instant case. In *Pyshos*, in the course of its supplementary citation proceeding, Pyshos discovered facts that led him to file a petition for turnover and to pierce the corporate veil. Similarly, here, Conserv discovered facts in its citation proceedings with DeLong, *i.e.*, that payments for the delivery of grain to DeLong were now to be made to RayVB rather than VB, that caused it to file a petition for turnover and to pierce the corporate veil. Just as Pyshos' petition alleged that shareholders Koloms and McLinden ignored corporate formalities, Conserv's petition alleged some of the factors that spoke to the two-prong test necessary to pierce a corporate veil: RayVB used VB's equipment to perform its business (comingling of assets), RayVB

took over VB's customer contracts (comingling of assets), and both VB and RayVB ignored corporate formalities. At the hearing on the motion, the trial court heard additional evidence on the factors set forth in the two-prong test, perhaps more compelling than those set forth in *Pyshos*.[2] However, as the court in *Pyshos* held, this evidence was simply outside the scope of what a trial court may consider in supplementary citation proceedings.

¶ 34 We reject Conserv's two-fold reply to VB's argument. First, Conserv essentially argues that VB has forfeited the argument because it failed to raise it before the trial court. However, VB did

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[2] For example, Conserv presented evidence of the following at the hearing: (1) As to lack of capitalization, Conserv established that RayVB was capitalized with $50 (in comparison to the $60,000 needed to capitalize VB, which ran a substantively similar trucking business); (2) As to lack of capitalization and comingling of resources, RayVB did not secure its own loan with the ultimate lessor of the truck fleet (a task that presumably would require some showing of its own collateral)— instead, it submitted payments directly to the ultimate lessor of the trucks in satisfaction of *VB*'s obligation; (3) As to failure to maintain an arm's length relationship between related entities and lack of corporate formality, there is no written agreement between VB and RayVB that RayVB make the truck lease payments on VB's behalf directly to the ultimate lessor— instead, there is only an "oral agreement" between the two corporations, each of which is managed by Ray; (4) As to diversion of funds and comingling of assets, VB ceased operations and transferred its customer base and goodwill (*i.e.*, *its business*) to RayVB *for zero consideration* (see, *e.g.*, *Russell v. Jim Russell Supply, Inc.*, 200 Ill. App. 3d 855, 860 (1990) (consideration for the sale of goodwill may be found in the general consideration for the sale of the business)); (5) the relative insolvency of VB, which presented a negative balance sheet; and (6) both VB and RayVB followed minimal corporate formalities.

touch upon the subject by complaining in the October 14, 2010, status hearing on the petition at issue that there had not yet been any citation proceedings against Ray to see whether Ray possessed any of VB's assets, implicitly drawing the court's attention to the proper subject matter of supplementary proceedings. Moreover, jurisdictional concerns may be raised at any time. See, *e.g.*, *Currie v. Lao*, 148 Ill. 2d 151, 157 (1992).

¶ 35 Second, Conserv argues that, because supplementary proceedings are intended to determine whether a third party is holding assets of the judgment debtor, it is necessary, in certain cases, to conduct a veil piercing analysis to determine whether the assets being held by the third party are indeed assets of the judgment debtor. We cannot accept this proposition. If we did, there would have been no reason for the *Pyshos* court to distinguish between: (1) a determination of whether the third party possessed the assets of the judgment debtor, and (2) a determination of whether the corporate veil protecting the third party from the debts of the judgment debtor should be pierced. Every single instance wherein a party successfully pierced the corporate veil against a third party in a supplementary proceeding against the debtor corporation would also be an instance where the third party was holding assets of the judgment debtor.

¶ 36 Additionally, we note that the case to which Conserv cites, *Bentley v. Glenn Shipley Enterprises, Inc.*, 248 Ill. App. 3d 647, 649 (1993), does not support its position. In *Bentley*, the appellate court ruled that "the trial court properly refused to pierce the corporate veil at the supplementary proceeding." *Id.* The court explained that the plaintiff had advocated piercing the corporate veil in the *initial* complaint that led to the judgment, the trial court had dismissed that aspect of the complaint, and, therefore, it was barred as *res judicata* in the supplementary proceedings. *Id.* The court was silent as to whether piercing the corporate veil could *ever* be

addressed in supplementary proceedings. *Id*. Even if it had, its ruling would have been made in the context of a plaintiff including the alleged "alter ego" third party in the initial complaint for judgment, a scenario altogether different from the facts before this court.

¶ 37 In sum, the trial court properly denied Conserv's emergency motion for turnover and to pierce the corporate veil protecting Ray and RayVB from liability for VB's debts. The motion was made in the context of supplementary proceedings to discover the assets of judgment debtor VB, and the line of inquiry necessary to pierce the corporate veil is outside the scope of such supplementary proceedings.

¶ 38 B. Continuation Exception to Corporate Successor Non-Liability

¶ 39 Next, we address Conserv's second argument on appeal: that RayVB should be held liable for the debts of VB under the continuation exception to the traditional rule of successor corporate nonliability (*Vernon*, 179 Ill. 2d at 346). The rule of successor corporate nonliability states that a corporation that purchases the assets of another corporation is not liable for the debts or liabilities of the transferor corporation. *Vernon*, 179 Ill. App. at 344-45. The traditional rule of corporate successor nonliability developed as a response to the need to protect *bonafide* purchasers from unassumed liability and was designed to maximize the fluidity of corporate assets. *Id*. at 345, quoting *Upholsters' International Union Pension Fund v. Artistic Furniture*, 920 F. 2d 1323, 1325 (7th Cir. 1990), and *Tucker v. Paxson Machine Co.*, 645 F. 2d 620, 623 (8th Cir. 1981). To offset the potentially harsh impact of the rule, exceptions exist to protect the rights of corporate creditors after dissolution. *Id*. There are four exceptions to the general rule of successor corporate nonliability: (1) where there is an express or implied agreement of assumption; (2) where the transaction amounts to a consolidation or merger of the purchaser or seller corporation; (3) where

the purchaser is merely a continuation of the seller; or (4) where the transaction is for the fraudulent purpose of escaping liability for the seller's obligations. *Id*.

¶ 40 The continuation exception, upon which Conserv relies, applies when the purchasing corporation is merely a continuation or reincarnation of the selling corporation. *Id*. The purchasing corporation has the same or similar management and ownership, but merely " ' wears different clothes'." *Id*. at 346, quoting *Bud Ante, Inc. v. Eastern Foods, Inc.*, 758 F. 2d 1451, 1458 (11th Cir. 1985). This exception prevents a situation whereby the specific purpose of "purchasing" the corporation is to place its assets out of reach of the predecessor's creditors so that a corporation may not escape liability by changing form without a significant change in substance. *Id*. The test used in the majority of jurisdictions is whether there is a continuation of the corporate entity of the seller—not whether there is a continuation of the seller's business. *Id*. at 346. To determine whether there is a continuation of the corporate entity of the seller, the court must determine whether there is a common identity of officers, directors, and shareholders between the selling and purchasing corporations. *Id*. at 346-47, but see *id*. at 350-51 (Justices Bilandic, Miller, and McMorrow, dissenting) (stating that the majorities' continuity test is too restrictive and that a lack of common ownership should not allow the successor corporation to escape liability where the totality of circumstances demonstrate that the successor corporation is a mere continuation of its predecessor). The supreme court has hinted that the common identity of officers, directors, and shareholders between the selling and purchasing corporations need not be *exact*. *Id*. at 348 (may have been possible to establish continuation of the corporate entity if sole owner of successor corporation had "any type" of ownership interest in the predecessor corporation that had been solely owned by another person).

¶ 41 We reject Conserv's argument for two reasons. First, we note that Conserv did not raise this argument before the trial court, and it is therefore forfeited. Points not argued before the trial court generally may not be raised for the first time on appeal. See, *e.g.*, *Carlson v. Glueckert Funeral Home*, 407 Ill. App. 3d 257, 261 (2011). Second, following the rationale set forth in *Pyshos*, we note that an analysis of corporate successor nonliability, like a corporate veil piercing analysis, falls outside the limited inquiry permissible in supplemental proceedings to discover assets, *i.e.*, whether the third party is holding assets of the judgment debtor that should be allowed to satisfy the judgment. *Pyshos*, 258 Ill. App. 3d at 623.

¶ 42 III. CONCLUSION

¶ 43 To borrow the concluding words of the *Pyshos*' court (258 Ill. App. 3d at 625), when a judgment creditor has received a judgment against a corporation and looks to its shareholders or, as here, to a different corporation with a similar ownership, management, and business operation, in order to satisfy the judgment, the judgment creditor may pursue two different avenues of recovery: (1) A judgment creditor may pursue supplementary proceedings, alleging that the third party shareholders or the other corporation is in possession of assets of the judgment debtor corporation; or (2) A judgment creditor may file a new complaint to pierce the corporate veil. Our judgment in no way bars Conserv from pursuing the second option in the future.

¶ 44 Here, both Ray and RayVB are protected by VB's veil of limited liability; they cannot be found to be in possession of VB's assets unless the veil is pierced. Conserv did not file a new complaint *against Ray or RayVB* to pierce the corporate veil and hold either liable for the debts of VB. Rather, it raised the argument in supplementary proceedings to the case *against VB*.

Accordingly, we affirm the trial court's denial of Conserv's petition for turnover and to pierce the corporate veil.

¶ 45 Affirmed.