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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1414**

Brett Mallberg,
Respondent,

vs.

Mark Gustafson, et al.,
Appellants.

**Filed May 26, 2020
Affirmed
Smith, Tracy M., Judge**

Hennepin County District Court
File No. 27-CV-16-8171

Jon R. Schindel, Kyle D. Moen, Kristin Kingsbury, Seiler Schindel, PLLC, Minneapolis,
Minnesota (for respondent)

Paul W. Chamberlain, Ryan R. Kuhlman, Chamberlain Law Firm, Wayzata, Minnesota;
and

Scott A. Johnson, Todd M. Johnson, Johnson & Johnson Law, LLP, Minnetonka,
Minnesota (for appellants)

Considered and decided by Smith, Tracy M., Presiding Judge; Connolly, Judge; and
Jesson, Judge.

UNPUBLISHED OPINION

SMITH, TRACY M., Judge

Following a court trial, the district court entered judgment in favor of plaintiff-
respondent Brett Mallberg on his claims against defendant-appellants Mark Gustafson and

M&M Systems Inc. for breach of contract and nonpayment of wages. The district court also pierced the corporate veil to hold Gustafson personally liable. Appellants assert that the district court erred by (1) granting partial summary judgment in favor of Mallberg despite disputed issues of fact regarding the reliability of an invoice log from which Mallberg’s compensation was determined, (2) denying appellants’ request to make an offer of proof regarding the unreliability of the invoice log at trial, (3) ordering double damages under Minn. Stat. § 181.03 (2018), and (4) piercing the corporate veil. We affirm.

FACTS

This dispute arises out of the business relationship between appellants Gustafson and his closely held corporation, M&M Systems, and respondent Mallberg, a former M&M Systems employee and friend of Gustafson’s. Mallberg worked for M&M Systems between 2011 and 2015 under two different compensation agreements—neither of which was reduced to writing—until his employment was terminated in March 2015. This action arose out of Mallberg’s assertion that he was not paid in accordance with those agreements.

1. The parties

M&M Systems is a Minnesota corporation that operated for many years selling and servicing manufacturing equipment. Gustafson¹ incorporated M&M Systems in 1991 after establishing the business as a sole proprietor in 1985. He and Ann Gustafson each own 50% of the shares of M&M Systems, and Gustafson was the sole functioning officer and

¹ “Gustafson” throughout this opinion refers to appellant Mark Gustafson. His wife, Ann Gustafson, also testified at the second stage of trial regarding piercing the corporate veil, so we use their first names when discussing that testimony to avoid confusion.

director of M&M Systems for most of the time relevant to this case. Mallberg worked for M&M Systems as a sales representative beginning around 1997 but resigned on good terms with Gustafson in the early 2000s. Around 2009, Mallberg began performing work for M&M Systems again as a part-time independent contractor. In 2011, M&M Systems reemployed Mallberg. Mallberg and Gustafson then worked together until Mallberg's employment was terminated in March 2015.

2. Mallberg's allegations

Mallberg sued appellants in April 2016, alleging the following. In July 2011, when M&M Systems reemployed Mallberg, Gustafson and Mallberg made the following oral compensation agreement (the pre-2013 compensation agreement): Mallberg would be given equity in M&M Systems equal to 50% of M&M Systems' profits, and, in exchange, Mallberg would forgive a debt of approximately \$32,000 that M&M Systems owed him for his prior contract work. From July 2011 to July 2013, M&M Systems paid Mallberg \$5,000 per month, which Mallberg states was "credited towards [his] rapidly accruing unpaid wages."² The parties tracked the money that M&M Systems owed to Mallberg and Gustafson by using a Microsoft Excel spreadsheet that logged information about each company invoice (the invoice log).

In July 2013, Mallberg confronted Gustafson about restructuring his compensation plan because he was dissatisfied with the amount of unpaid wages he had accumulated. The two reached a new oral compensation agreement (2013 compensation agreement):

² At trial, Mallberg described this monthly \$5,000 as a "draw against partnership profits."

Mallberg was to be paid 70% of labor profits, 50% of parts sales, and 30% of profits from the sale of new machines. Mallberg continued to track the amounts M&M Systems owed him in the invoice log.

Almost one year later, in June 2014, M&M Systems paid Mallberg in four separate checks, signed by Gustafson. These four checks totaled \$83,258.30 and had memos indicating that they corresponded to four time periods between July 2011 and December 2013. About six months later, in November and December 2014, Mallberg was again paid lump sums via two checks, signed by Gustafson. These two checks totaled \$44,233.15 and indicated that they corresponded to two time periods between January 2014 and April 2014. Mallberg continued to accrue wages from April 2014 through March 2015—when he was terminated—but was never paid for any work performed during this period.

As relevant to this appeal, Mallberg asserted claims for breach of the 2013 compensation agreement for failure to pay Mallberg wages and reimburse expenses, and for failure to pay wages in violation of Minn. Stat. §§ 181.10-.1721 (2018). Mallberg sought the remedy of piercing the corporate veil.

3. Appellants' allegations

In their answer, appellants denied much of the substance of Mallberg's allegations and brought several counterclaims, including for conversion. They specifically denied that M&M Systems ever made an ownership agreement with Mallberg or that M&M Systems ever agreed to pay Mallberg 70% of labor profits. They alleged that, when Mallberg was terminated, he had no unpaid wages because he had been overpaid "due to falsified compensation and expense reimbursement claims." They further alleged that, while

employed by M&M Systems, Mallberg diverted M&M Systems' business and revenue to himself, falsified expense reports, misappropriated business assets, and stole parts and equipment from M&M Systems.

4. Partial summary judgment

Mallberg moved for partial summary judgment, arguing that he was entitled to judgment on his claims for breach of the compensation agreement and subsequent failure to pay wages in violation of Minn. Stat. § 181.101 and on his request to pierce the corporate veil to hold Gustafson personally liability. As to the failure-to-pay-wages claim,³ Mallberg argued that there was no genuine issue of material fact regarding (a) the existence and terms of the 2013 compensation agreement or (b) the amount due and owing to him under the 2013 compensation agreement, as evidenced by the invoice log.

(a) The existence and terms of the 2013 compensation agreement

When Mallberg moved for partial summary judgment, Gustafson had stated the following in a declaration in regards to the terms of the 2013 compensation agreement:

On July 1, 2013, Mallberg sought a change from his salary that he had been receiving from M&M Systems. In a brief phone call to me, Mallberg demanded he be paid 70% of all of the corporation's billings for work performed by him. . . . I do not agree with Mallberg's testimony that we agreed he would receive this 70% rate, *plus* 50% of the gross profit on parts sales made by M&M, *plus* 30% of the gross profit on new machine sales made by me. *M&M Systems only acquiesced to Mallberg's demand for a 70% commission on service work performed by Mallberg.*

³ We focus here on the failure-to-pay wages claim because the district court denied summary judgment as to piercing the corporate veil.

(Third emphasis added.) As to the pre-2013 compensation agreement, Gustafson stated in the same declaration that it only entitled Mallberg to a salary of \$60,000 per year. The following table summarizes what the parties claimed to be the terms of the various compensation agreements at the time of summary judgment:

	Mallberg’s purported understanding	Gustafson’s purported understanding
Prior to July 2011	Greater of \$70 per hour or 30% of the profit from sale of a machine	Amount invoiced at \$70 per hour service labor
July 2011 to July 2013 (pre-2013 compensation agreement)	50% of all M&M Systems’ profits	\$60,000 annual salary as an employee
July 2013 to March 2015 (2013 compensation agreement)	70% of service profit, 50% of parts profit, 30% of sales profit	70% commission on service work performed by Mallberg

Mallberg argued that the undisputed evidence supported his understanding of the 2013 compensation agreement, as it showed that he had been paid in accordance with his understanding of the terms of both agreements, as demonstrated by the six 2014 checks, and that the invoice log, accessed by both Gustafson and Mallberg, meticulously tracked invoices and calculated payments to Mallberg in a way that was consistent with Mallberg’s understanding of both agreements.

Appellants responded that the terms of the 2013 compensation agreement were disputed issues of material fact. They argued that “M&M Systems only acquiesced to Mallberg’s demand for a 70% commission on service work performed by Mallberg and never agreed to pay Mallberg for parts sales from M&M inventory, or sales work, which was performed by Gustafson.” They pointed to problems with the invoice log, described in more detail below, and asserted that these problems called into question Mallberg’s

credibility. Appellants did not dispute that the 2014 lump-sum checks had been paid to Mallberg but argued that Gustafson signed them “trusting Mallberg” and did not independently review them. Appellants also conceded that no payments were made to Mallberg after December 2014, and it was undisputed that Mallberg made a written demand seeking payment of unpaid wages in May 2015.

(b) The invoice log

The invoice log purports to list M&M Systems’ invoices from February 2011 to April 2015 and calculates Mallberg’s commission payments based on those invoices. Gustafson testified at his deposition that he and Mallberg both made entries in the invoice log, and an email between him and Mallberg confirmed Gustafson’s familiarity with it.

Mallberg argued that there was no genuine issue of material fact as to the outstanding amount M&M Systems owed him because the invoice log meticulously tracked all of the company’s invoicing and payment activity. He argued that the log shows that, at the time of his termination from employment, M&M Systems owed him \$161,487.95. Appellants responded that the accuracy of the invoice log was disputed, arguing two things: that the spreadsheet contains “hidden data” that does not appear in the printed version and the hidden data contain “theoretical amounts” for overhead expenses that Mallberg relied on to prepare his paychecks; and that the invoice log contains instances where Mallberg used a 0.8 multiplier, rather than a 0.7 multiplier, to calculate his commissions on service work (thereby reflecting an entitlement to 80% rather than 70%).

In reply, Mallberg emphasized that the invoice log matched, within cents, the amounts M&M Systems actually paid him and that the “hidden cells” in the in spreadsheet

did not affect the outstanding amount owed to him because those cells pertained only to payments made before the 2013 compensation agreement. As to the 0.8 multiplier, he noted that this occurred infrequently and was an error that could be remedied by reducing his claimed commission by \$3,323.03, the difference between using the 0.8 multiplier and the 0.7 multiplier.

(c) District court's partial summary-judgment order

The district court granted partial summary for Mallberg on his breach-of-contract and failure-to-pay-wages claims, awarding him \$134,691.34 in unpaid wages and an additional \$134,691.34 pursuant to the double-damages provision in Minn. Stat. § 181.03. The district court noted that, while the existence and terms of an oral agreement are generally issues of fact, appellants admitted the *existence* of the 2013 compensation agreement through Gustafson's declaration. The district court also determined that there was no genuine issue of material fact that the 2013 compensation agreement contained a term entitling Mallberg "to a 70% commission on profit derived from service work performed by [Mallberg]." The district court went on to conclude that service "profit," in this context, meant gross profit derived from service work. (The difference between net and gross profit is that gross profit is typically calculated by taking total revenue and subtracting the cost of goods sold, whereas net profit is calculated by also subtracting overhead costs, such as taxes and interest paid on debt, from gross profit. *Random House Webster's Unabridged Dictionary* 843, 1290 (2nd ed. 1998).) The district court determined that the parties' agreement regarding the service work was based on gross profit because "[t]he invoice log does not contain the information needed to calculate net profits. Since

[appellant] Gustafson used the Invoice Log, and it is obvious that the Invoice Log calculates commissions on gross profits, it can be inferred from [Gustafson's] conduct in signing the checks that, [Mallberg] is entitled to commissions on gross rather than net service profit." (Citations omitted.)

The district court determined that there *was* a genuine issue of material fact as to the remaining terms of the 2013 compensation agreement, specifically, whether the 2013 compensation agreement included paying Mallberg 50% of parts profit and 30% of sales profit.

As to the invoice log, the district court determined that there was "no dispute that the invoice log accurately *lists the invoices* for the relevant time period." (Emphasis added.) Rather, the parties disputed "whether the log can be relied on to establish the additional commissions that [Mallberg] is entitled to." The district court determined that the use of the 0.8 rather than 0.7 multiplier for calculating commission on service profit was an inconsistency that "raise[d] a genuine issue of material fact regarding the reliability of the commission calculations in the Invoice log" but did not affect the reliability of the invoice entries themselves. As to the "hidden cells" problem, the district court explained that the hidden cells have no effect on any cells after July 2013 and Mallberg was only requesting summary judgment on the issue of unpaid wages earned between May 2014 and March 2015.

The district court's partial summary-judgment order explains how the information in the invoice log leads to the determination, for each invoice, of gross service labor profit, which is listed in column AC of the log. Because the district court determined that

appellants had not offered any evidence specifically “disputing the accuracy of the invoices in the invoice log,” it used the invoices to calculate the amount of commissions owed to Mallberg based on the 2013 compensation agreement term that he receive 70% commission on service work profit. It did this by taking the gross service labor profit for each invoice; calculating that the sum of the gross service labor profit accrued between May 1, 2014, and March 31, 2015, was \$192,416.20; and multiplying \$192,416.20 by 0.7 to get \$134,691.34. It accordingly awarded Mallberg \$134,691.34 for unpaid wages accrued between May 1, 2014, and March 31, 2015.

The district court acknowledged appellants’ argument that they were entitled to offset the unpaid wages to Mallberg by any amount that he wrongfully received prior to the 2013 compensation agreement. Appellants essentially argued that the “hidden cells” in the invoice log established that Mallberg was overpaid prior to the 2013 compensation agreement and so appellants did not owe him the full compensation he claimed when his employment ended. The district court determined, though, that it could not offset the unpaid wages at the time of the partial summary-judgment order because the existence of an overpayment depended on the disputed terms of the pre-2013 compensation agreement. The issue of any potential offset was accordingly reserved for trial.

5. Trial stage one: liability and damages

The district court held a four-day bench trial on the following issues: (1) the existence of the additional alleged terms of the 2013 compensation agreement—specifically, a 50% commission on part sales profits, a 30% commission on new machine

sales profits, and a 30% commission on service work performed by Gustafson⁴; (2) the terms of the pre-2013 compensation agreement, for the purposes of establishing any offsets; (3) appellants' counterclaims and alleged offset amounts; (4) Mallberg's remaining claims; and (5) the total award of damages. The veil-piercing issue was reserved for a second stage of the trial.

Following the first stage of the trial, the district court issued findings of fact, conclusions of law, and an order for judgment. It first made the following credibility determinations:

[Mallberg's] account was more credible. [Mallberg] was detailed and consistent with his testimony; he acknowledged mistakes and facts that were contrary to his claims; and he was forthcoming, confident, and undefensive when answering questions. Gustafson, on the other hand, had a poor memory and often could not remember important details; he changed his testimony or gave contradictory answers at times; his answers were often very broad and vague; and he was halting and defensive when answering many questions.

The district court then made the following relevant findings of fact. Mallberg became an employee of M&M Systems in 2011 and, under the pre-2013 compensation agreement, "was entitled to fifty percent of M&M's profits." M&M Systems paid Mallberg \$5,000 per month from July 2011 through June 2013 "as a draw against his ownership profits and expense reports." In July 2013, Mallberg and Gustafson entered into the 2013

⁴ Mallberg did not allege this term for 30% commission on service work *performed by Gustafson* in the complaint but presented evidence on it at trial. Even though the district court, following the trial, found this term to be part of the 2013 compensation agreement, it declined to allow Mallberg to recover under it.

compensation agreement, which entitled Mallberg to commissions and reimbursement as follows:

- 70% commission on the gross profit derived from service work that Mallberg performed;
- 30% commission on the gross profit derived from service work performed by Gustafson;
- 50% commission on the gross profit of Mallberg's parts sales;
- 30% commission on the gross profit of Mallberg's new machine sales; and
- reimbursement for legitimate business expenses.

Gustafson acquiesced to the terms of the 2013 compensation agreement. He signed six checks for Mallberg in 2014 "because they seemed reasonable" and "he did not check them." Mallberg never received any payment for work from May 1, 2014, through March 31, 2015. Mallberg's expense reports were supported by persuasive explanations, and Mallberg agreed to offsets for certain tools and duplicative expenses. Mallberg did not take or misappropriate certain M&M Systems property, as alleged by appellants, and returned other disputed property.

Addressing the invoice log, the district court noted that the "hidden" cells were visible in earlier versions of the invoice log and that "[t]he calculations derived from the hidden cells are visible even when the cells themselves are hidden." Though the district court noted that "[s]ome of the invoices . . . did not include a cost of goods sold," it also found that "[appellants] did not provide any evidence of what goods or parts were missing and what the cost of those goods or parts were."

The district court found that appellants were liable for breach of contract and failure to pay wages in violation of Minn. Stat. §§ 181.10-.1721. It dismissed the remainder of Mallberg's claims and all of appellants' counterclaims. After accounting for various

offsets, many of which were voluntarily submitted by Mallberg, the district court found that M&M Systems owed Mallberg \$152,500.60 in unpaid wages.⁵ It then applied the double-damages provision in Minn. Stat. § 181.03, subd. 3, for a total damages award of \$305,001.20.

6. Trial stage two: piercing the corporate veil

The case proceeded to the second stage of the trial, on Mallberg's request to pierce the corporate veil. This was a two-day bench trial, with a new judge presiding. Four witnesses testified: Mallberg, Mark Gustafson, Ann Gustafson, and M&M Systems' accountant. Thereafter, the district court issued its findings of fact, conclusions of law, and order granting the request to pierce the corporate veil. As to credibility, the district court determined that Mallberg's testimony was more credible than Mark Gustafson's, that Ann Gustafson's testimony was only somewhat credible but was skewed to support Mark's version of events, and that M&M Systems' accountant's testimony was credible.

The district court made detailed factual findings regarding the history of the corporation, its compliance with corporate formalities, the lack of involvement of Ann Gustafson in the business, the interconnection between the personal finances of the Gustafsons and the business, and the business's failure to file income tax returns for seven years. The district court then performed a veil-piercing analysis. It ultimately determined that several circumstances did not favor veil-piercing, while other factors did. The district

⁵ This sum included the \$134,691.34 previously determined by the district court on partial summary judgment.

court concluded that the factors favoring veil-piercing, along with the element of fundamental unfairness that would exist if the veil was not pierced, warranted piercing the corporate veil to hold Gustafson personally liable.

7. Posttrial motions

Appellants moved for a new trial or amended findings based on several alleged errors, which we need not delineate here. The district court denied the motions.

This appeal follows.

D E C I S I O N

Appellants argue that the district court committed reversible error at multiple stages in these proceedings. Specifically, they allege errors regarding partial summary judgment, admission of evidence at trial, the amount of the damages award, and Gustafson's personal liability for the damages award. Our analysis moves chronologically through the proceedings to address each argument in turn.

I. The district court did not err by granting partial summary judgment in favor of Mallberg.

"A motion for summary judgment shall be granted when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). A genuine issue of material fact exists if a rational trier of fact, considering the record as a whole, could find for the nonmoving party. *Frieler v. Carlson Mktg. Grp., Inc.*, 751 N.W.2d 558, 564 (Minn. 2008). This court reviews a district court's grant of summary judgment de novo.

Dukowitz v. Hannon Sec. Servs., 841 N.W.2d 147, 150 (Minn. 2014). We “view the evidence in the light most favorable to the party against whom summary judgment was granted to determine whether there are any genuine issues of material fact and whether the district court correctly applied the law.” *Id.*

“[G]eneral assertions” are not enough to create a genuine issue of material fact. *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995). “In order to successfully oppose a motion for summary judgment, appellant must extract specific, admissible facts from the voluminous record and particularize them for the [district court] judge.” *Kletschka v. Abbott-Northwestern Hosp., Inc.*, 417 N.W.2d 752, 754 (Minn. App. 1988), *review denied* (Minn. Mar. 30, 1988). “[W]hen determining whether a genuine issue of material fact for trial exists, the court is not required to ignore its conclusion that a particular piece of evidence may have no probative value, such that reasonable persons could not draw different conclusions from the evidence presented.” *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997).

Appellants assert three challenges to the district court’s grant of partial summary judgment in favor of Mallberg, which we address in turn.

A. Reliability of the invoice log

Appellants argue that the district court erred by relying on the invoice log because it is unreliable in light of the spreadsheet’s “hidden cells.” They argue that “[t]he hidden data and expenses the [district] court overlooked have a severe economic impact and

significant credibility implications” because Mallberg used them to pay himself “theoretical profit.”

Mallberg responds that the district court accurately recognized that the hidden cells had *no effect* on the amount of wages that Mallberg claimed he earned during the time period at issue: May 2014 to March 2015. These cells, which are initially not visible upon opening the spreadsheet but rather are contained under a visible title that says “2 Year Summary,” can be unhidden by clicking “unhide.” The result shows a table that contains profits and expenses for M&M Systems from July 1, 2011, through June 20, 2013. Based on these figures, the spreadsheet notes an amount of “total estimated profit” for this two-year range.

Though the district court determined that the hidden cells were not relevant to Mallberg’s wages earned between May 2014 and May 2015, it determined that they may “be relevant to determining the terms of the compensation agreement that preceded the 2013 Agreement” and that any overpayment of wages from that time period may be used to offset the unpaid wages owed to Mallberg. Appellants were permitted to present evidence on any alleged overpayments made prior to the 2013 compensation agreement at trial.

Appellants do not demonstrate how the district court’s specific determination—that the hidden cells were irrelevant to the question of wages owed to Mallberg for May 2014 to March 2015—was erroneous. Appellants repeatedly emphasize the “hidden” nature of the cells, and that they contained “estimated” profits and expenses, and argue that this calls the reliability of the entire invoice log into question. The district court recognized and

accounted for any reliability issues at the summary-judgment stage, though, by issuing a narrow summary-judgment decision. Mallberg only requested unpaid wages from May 2014 to March 2015, and the partial summary-judgment order was confined to that time period. Again, the district court determined the amount of unpaid wages from that period by taking the gross service labor profit for each invoice in the invoice log; calculating that the sum of the gross service labor profit accrued between May 1, 2014, and March 31, 2015, was \$192,416.20; and multiplying \$192,416.20 by 0.7 to get \$134,691.34. Appellants offer no explanation as to *how* the hidden cells allegedly affect the gross-service-labor column utilized by the district court during the relevant time period.

B. Alleged overpayments to Mallberg

Appellants next argue that the district court erred in granting partial summary judgment because “many instances of overpayments taken by Mallberg appear in the record, and they need to be tried instead of summarily disposed.” They argue that these overpayments, evidenced by the hidden cells, should “be subtracted from [Mallberg’s] wage claim.” But the district court expressly reserved the issue of alleged overpayments for trial. Appellants’ argument is thus without merit.

C. Inference of gross rather than net profit

Finally, appellants argue that the district court improperly made an inference in favor of the moving party—Mallberg—that the undisputed term in the 2013 compensation agreement entitling Mallberg to “a 70% commission on service work” referred to 70% of *gross* profits from service work, rather than *net* profits.

The district court determined that there was no genuine issue of material fact that the 2013 compensation agreement term for service work referred to gross profits because “[t]he invoice log does not contain the information needed to calculate net profits. Since [appellant] Gustafson used the Invoice Log, and it is obvious that the Invoice Log calculates commissions on gross profits, it can be inferred from [Gustafson’s] conduct in signing the checks that, [Mallberg] is entitled to commissions on gross rather than net service profit.”

Appellants argue that the district court erred because the record contained evidence, in the form of a statement from Gustafson, that Mallberg’s 70% rate of hourly pay was to be based on “gross proceeds from his hourly service work after expenses, not total receipts which ignore all of the company’s overhead, employment taxes, and costs of doing business.” In other words, appellants argue that the pay was to be based on the company’s net profits from service work. They further argue that the district court’s decision is “self-contradictory,” as it determined on one hand that “there is no dispute that the invoice log accurately lists the invoices for the relevant time period,” but on the other hand that “the invoice log is internally inconsistent.” Because the invoice log is “internally inconsistent,” they argue, the district court erred by relying on it and ignoring a credibility problem when it “inferred” a term of the 2013 agreement in favor of Mallberg.

Mallberg responds that the district court properly disregarded Gustafson’s proposed interpretation of profits because it was unsupported by the evidence in the record and the parties’ course of conduct over nearly two years showed that the agreement was for gross profits from service work.

Appellants do not point to any record evidence that they presented to the district court at summary judgment that suggests that the 70% commission on service work term was to be based on net rather than gross profits. The declaration from Gustafson that they cite merely references a request by Mallberg that he “be paid 70% of all of the corporation’s billings for work performed by him” and goes on to say that “M&M Systems only acquiesced to Mallberg’s demand for a 70% commission on service work performed by Mallberg.” In his deposition testimony, Gustafson described Mallberg’s demand as for “70 percent of service invoicing,” or “70 percent of . . . service billings.” We can find no place in the testimony, and appellants do not point to any, where Gustafson states that he rejected this term and agreed to one that factored in M&M System’s overhead costs instead.

Even if Gustafson did testify that his understanding was that the agreement was based on net profits, “general assertions” are not enough to create a genuine issue of material fact to withstand summary judgment. *Nicollet Restoration*, 533 N.W.2d at 848. The evidence before the district court showed that Gustafson was familiar with the invoice log, which calculated Mallberg’s commission under the 2013 compensation agreement based only gross sales profits, and that Gustafson signed Mallberg’s pay checks, which were for amounts reflected in the invoice log. The district court thus drew the only *reasonable* inference from the record before it about the type of profit contemplated by the 2013 agreement. *See DLH, Inc.*, 566 N.W.2d at 70. Appellants did not “extract specific, admissible facts from the voluminous record and particularize them for the [district court] judge,” *Kletschka*, 417 N.W.2d at 754, to show that the agreement might have been based on net profits, nor do they do so on appeal.

Appellants' argument that the district court "contradicted itself" in the summary-judgment order, and that it should not have relied on the invoice log at all, is unpersuasive. The district court's order specified that "there is no dispute that the invoice log accurately *lists the invoices* for the relevant time period." (Emphasis added.) The district court's order simply recognized, in the specific context of the occasional use of a 0.8 rather than 0.7 multiplier, that the invoice log was "internally inconsistent," and determined that this inconsistency means that there is a genuine issue of material fact as to what, if any, commissions the parties agreed to in the 2013 compensation agreement beyond the undisputed 70% commission on service work. The district court's detailed and nuanced analysis of the invoice log does not suggest that the district court "contradicted itself," and the district court properly accounted for appellants' reliability concerns by only awarding partial summary judgment based on the undisputed term. The district court did not err by granting partial summary judgment in favor of Mallberg.

II. The district court did not abuse its discretion by denying appellants' request to make an offer of proof regarding the unreliability of the invoice log at trial.

"The admission of evidence rests within the broad discretion of the [district] court and its ruling will not be disturbed unless it is based on an erroneous view of the law or constitutes an abuse of discretion." *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45-46 (Minn. 1997) (quotation omitted). "Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and . . . [i]n case the ruling is one excluding evidence, the substance of the evidence was made known

to the court by offer or was apparent from the context within which questions were asked.”
Minn. R. Evid. 103(a).

Appellants argue that the district court erred during the first stage of trial by “denying [their] right to make an offer of proof that the invoice log is unreliable.” They do not identify with precision what evidence they attempted to offer. Mallberg responds that the disputed “evidence” was an illustrative exhibit (proposed exhibit 141) created by appellants to challenge the reliability of the invoice log. He argues that this illustrative exhibit only addressed invoices *after July 2013* and that it therefore related only to the district court’s summary-judgment decision and not to any issues for trial. A review of the trial transcript helps illuminate the parties’ arguments.

The trial transcript shows that Mallberg’s counsel objected when appellants’ counsel attempted to introduce proposed exhibit 141 during Gustafson’s direct examination. The initial objection was that appellants had disclosed the illustrative exhibit just days before trial and that it was not wholly demonstrative or illustrative because it contained new information and evidence not based on invoices in the record. The district court sought clarification from appellants’ counsel regarding the contents and purpose of the exhibit. Appellants’ counsel explained: “What it does is it goes through the invoices from July 2013 on. And it compares the invoices that are in [evidence] . . . and analyzes the spreadsheet that has been admitted into evidence” Counsel explained that he had worked with Gustafson to prepare the exhibit and that it had not been prepared at the summary-judgment phase of the litigation because Gustafson was experiencing a medical issue at that time. Counsel attempted to explain the exhibit’s relevance, stating:

The [c]ourt's [partial summary-judgment] order does say in here that . . . my clients, dispute the reliability of the invoice log . . . the [c]ourt concludes, "there is no dispute that [the invoice log] accurately lists the invoices for the relevant time period and fact issues exist about whether the log can be relied on to establish the additional commissions the plaintiff is claiming he's entitled to."

. . . .

When we disputed that . . . we had an affidavit saying we dispute it . . . And now what I have for trial is much more specific and undeniable changes in the invoice log that I think the [c]ourt would be splitting the form over the truth and the substance here. Because I can show that there were many times that there were charges that were illuminated, you know, in the course of presenting this that were money that he earned.

The district court pressed appellants' counsel to precisely explain how it pertained to *the issues at trial*, which primarily were respondent's claim for additional commission-based income from the period between 2014 and 2015, "offsets derived from payments prior to the 2013 agreement," and appellants' counterclaims. Appellants' counsel responded that "[i]t bears nothing prior to 2013," and then discussed again why appellants believed the invoice log was inaccurate, and requested that they be allowed to present this "solid evidence of errors."

The district court ultimately denied the request to introduce the exhibit. It noted that appellants' counsel appeared to concede that the document was relevant only to challenging the summary-judgment order.

Appellants' counsel then asserted that the exhibit was relevant to their counterclaim for conversion. Mallberg's counsel countered that the exhibit was not relevant to the only grounds that appellants had identified for their conversion counterclaim.

The district court ruled that “at this point—the exhibit remains excluded and let’s proceed by testimony and we’ll see if we get to a point where there’s some relevance to it.” Appellants’ counsel then asked permission to “have the exhibit in the record as a formal offer of proof.” Mallberg’s counsel objected on the bases that the exhibit was irrelevant, not produced in discovery, did not comply with the rule for summary evidence, and contained new testimony. The district court sustained the objection and did not let appellants’ counsel make any further offers of proof.

Appellants argue that the district court erred by not admitting the entire illustrative exhibit as an offer of proof. They do not specifically argue that the district court erred by excluding it as substantive evidence. They suggest that they cannot do so because the offer of proof that the district court barred was “legally required to create a proper record for appeal.” But this argument ignores that the district court allowed appellants’ counsel to speak at length about the proposed exhibit and its contents. The rule of evidence implicating offers of proof reads:

(a) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and

(1) . . .

(2) *Offer of proof.* In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

Minn. R. Evid. 103(a)(2). Here, it is clear that the substance of the exhibit was made known to the district court. Appellants essentially claim that the district court erred when it did not allow them to put the *entire* illustrative exhibit into the record as an offer of proof. They

do not support this claim with legal authority, though, and, on this record, nothing required the district court to accept the entire exhibit for this purpose, especially when Mallberg contended that the exhibit contained disputed facts and testimony.

III. The district court did not err by ordering double damages under Minn. Stat. § 181.03.

Appellants assert two arguments why the district court erred by ordering double damages under Minn. Stat. § 181.03, subd. 2. Both arguments turn on issues of statutory interpretation. While granting equitable relief is typically within the sound discretion of the district court, “[t]he supreme court has not deviated from a de novo standard of review of legal issues simply because the claims at issue are for equitable relief.” *Drewitz v. Motorwerks, Inc.*, 867 N.W.2d 197, 204 n.2 (Minn. App. 2015) (citations and quotation omitted), *review denied* (Minn. Oct. 7, 2015); *see also Brown v. Lee*, 859 N.W.2d 836, 839-40 (Minn. App. 2015) (explaining that de novo standard of review applies to determinations that equitable relief is not available as a matter of law), *review denied* (Minn. May 19, 2015).

A. Post-employment alteration to Mallberg’s compensation

First, appellants argue that M&M Systems did not make alterations to the method, timing, or procedures of payment *after* Mallberg’s termination, because the dispute regarding his compensation occurred *during* his employment. The statutory section at issue here is located within the Minnesota Payment of Wages Act, Minn. Stat. §§ 181.01-.1721 (2018), which provides protection for the payment of wages and commissions owed to employees whose employment is terminated. Minn. Stat. § 181.03, subd. 2, provides:

Except as otherwise provided in section 181.13, an employer or a person, firm, corporation, or association may not alter the method of payment, timing of payment, or procedures for payment of commissions earned through the last day of employment after the employee has resigned or been terminated if the result is to delay or reduce the amount of payment.

Subdivision 3 then provides for the double damages at issue, stating: “An employer who violates this section is liable in a civil action brought by the employee for twice the amount in dispute.” Minn. Stat. § 181.02, subd. 3.

Appellants contend that “[t]he statute’s plain language shows that the legislature intended to penalize employers who change the rules to diminish an employee’s commissions after the individual’s employment has ended.” Because the parties’ dispute over compensation arose *prior to* Mallberg’s termination, appellants argue, the statute does not apply here. Mallberg responds that, even though appellants disputed the specific amount owed to him, this did not excuse appellants for paying him *nothing*; they still should have paid what they believed was owed under the undisputed “70% of service profits” term of the 2013 compensation agreement. Appellants, he argues, violated the statute by refusing to pay him at all for his work performed between May 2014 and March 2015, even after he specifically demanded payment. And this, Mallberg argues, was inconsistent with the typical methods and procedures for payment of his commissions.

The district court agreed with Mallberg, determining that “[appellants’] non-payment of the 70% commission, even calculated on [appellants’] preferred terms, was an alteration of the timing of payment, at a minimum.”

The record shows that the parties' usual course of conduct around Mallberg's commission payments was that Mallberg would track the commissions on his sales, would enter all data into the invoice log that both parties utilized, and then, after varying durations of time had passed, would calculate the amount he believed was owed to him and accordingly prepare checks for Gustafson's signature. After Mallberg was terminated in March 2015, he gave appellants a written demand seeking payment of unpaid wages accrued between May 2014 and March 2015, based on his calculations. In the spring of 2015, Gustafson made repeated promises to pay Mallberg and claimed that he "was only two three days from having the check to [Mallberg]." But at the time of trial, in October 2017, Mallberg had yet to be paid anything for this time period.

Under the plain language of the statute, we conclude that appellants' refusal to compensate Mallberg at all for his work done between May 2014 and March 2015 upon his request, when the refusal was based only on vague accusations of past overpayments unsupported by actual calculations, indeed altered "the method of payment, timing of payment, or procedures for payment." Minn. Stat. § 181.03, subd. 2. The statute's plain language does not allow an employer to escape liability if a dispute arose regarding the amount owed before the employee's termination. After Mallberg's termination, Gustafson represented multiple times that payment was forthcoming. He never paid him anything, though. The plain language of the statute is satisfied under these circumstances.

B. Mallberg's compensation as "commission"

Appellants next argue that the district court erred by imposing twice the amount owed because Minn. Stat. § 181.03, subd. 2, pertains to sales commissions and Mallberg was paid hourly for his repair work.

As the district court noted in its order denying appellants' motions for a new trial or amended findings, the threshold problem with appellants' argument is that their underlying assertion about Mallberg being paid hourly wages "ignores the [district] [c]ourt's findings and contradicts numerous pieces of trial evidence." The district court explained:

First, [appellants'] hourly-wage theory is inconsistent with [Gustafson]'s admission that "M&M Systems only acquiesced to Mallberg's demand for a 70% commission on service work performed by Mallberg."

Second, [appellants] argue that they disputed how 70% of profits should be calculated, *not* that 70% of profits were not owed; this is entirely inconsistent with the premise that Mallberg was only entitled to an hourly wage, rather than a percentage of profit.

Third, the Court found a term for commissions ran throughout the Parties' 2013 Compensation Agreement, applying to 70%, 50%, *and* 30% terms. [Appellants'] theory disregards an essential premise of the 2013 Compensation Agreement (and the Pre-2013 Agreement); that Mallberg and M&M agreed to alter the terms of his pre-existing compensation structure.

[Appellants'] arguments therefore assume as a premise a fact the Court did not find and by necessity rejected: that Mallberg was only entitled to hourly compensation.

Appellants do not claim that these determinations are erroneous. Nor do they provide any record citations for the proposition that Mallberg was an hourly employee under the 2013 compensation agreement. They seem instead to contend that even if Mallberg was paid

“commissions,” he was not paid “sales commissions,” and the statute pertains only to sales commissions. We accordingly address that argument.

“The first step in statutory interpretation is to determine whether the statute’s language, on its face, is ambiguous.” *State v. Overweg*, 922 N.W.2d 179, 183 (Minn. 2019) (quotations omitted). “A statute is ambiguous only when the statutory language is subject to more than one reasonable interpretation.” *State v. Fleck*, 810 N.W.2d 303, 307 (Minn. 2012). If a statute is unambiguous, then appellate courts must apply the statute’s plain meaning. *Larson v. State*, 790 N.W.2d 700, 703 (Minn. 2010).

There is no statutory definition of the term “commissions” that pertains to Minn. Stat. § 181.03. When a statute does not define a term, courts give the term its “plain and ordinary meaning.” *Christianson v. Henke*, 831 N.W.2d 532, 536-37 (Minn. 2013) (quotation omitted). A commission is ordinarily defined as “[a] fee paid to an agent or employee for a particular transaction, [usually] as a percentage of the money received from the transaction.” *Black’s Law Dictionary* 327 (10th ed. 2014); *see also American Heritage Dictionary* 371 (5th ed. 2018) (“A fee or percentage allowed to a sales representative or an agent for services rendered.”). Under this ordinary definition, a percentage of sales profits would be one kind of commission, but not the only kind.

Appellants urge the court to apply the definition of “commission salesperson” from Minn. Stat. § 181.145, subd. 1, which is “a person who is paid on the basis of commissions for sales and who is not covered by [other] sections . . . because the person is an independent contractor.” That statute specifically states, though, that that definition is for the purposes of section 181.145. As the district court noted in its order denying appellants’

posttrial motions, “[t]here is no indication that Section 181.145’s limited definition is intended to extend to all of Chapter 181.”

Here, the district court found, and Gustafson’s declaration supports, that the 2013 compensation agreement was at least for 70% of profits on Mallberg’s service work. That means Mallberg received a fee for particular transactions, as a “percentage of the money received from the transaction.” *Black’s Law, supra*, at 327. This arrangement falls squarely within the ordinary definition of “commission.” The district court did not err by ordering double damages under Minn. Stat. § 181.03.

IV. The district court did not abuse its discretion by piercing the corporate veil to hold Gustafson personally liable.

Finally, appellants challenge the district court’s decision to pierce the corporate veil. “Piercing the corporate veil is an equitable remedy that is intended to avoid injustice.” *Aaron Carlson Corp. v. Cohen*, 933 N.W.2d 63, 69 (Minn. 2019). Whether to grant an equitable remedy falls within the sound discretion of the district court, and appellate courts will not reverse the district court’s decision absent an abuse of discretion. *Equity Tr. Co. Custodian ex rel. Eisenmenger IRA v. Cole*, 766 N.W.2d 334, 339 (Minn. App. 2009). “The factual findings made in support of the decision to pierce are reviewed for clear error.” *Id.*

“A court may pierce the corporate veil to hold a shareholder liable for the debts of the corporation when the shareholder is the alter ego of the corporation.” *Hoyt Props., Inc. v. Prod. Res. Grp., L.L.C.*, 736 N.W.2d 313, 318 (Minn. 2007). In determining whether a corporation is the shareholder’s alter ego, “courts are concerned with reality and not form, with how the corporation operated and the individual defendant’s relationship to that

operation.” *Victoria Elevator Co. v. Meriden Grain Co.*, 283 N.W.2d 509, 512 (Minn. 1979). Relevant factors include:

insufficient capitalization for purposes of corporate undertaking, failure to observe corporate formalities, nonpayment of dividends, insolvency of debtor corporation at time of transaction in question, siphoning of funds by dominant shareholder, nonfunctioning of other officers and directors, absence of corporate records, and existence of corporation as merely facade for individual dealings.

Id. If the court finds that “a number of these factors” are present, it then must also find “an element of injustice or fundamental unfairness” before it can pierce the corporate veil. *Id.* To show fundamental unfairness, “[p]roof of strict common-law fraud is not required, but evidence that the corporate entity has been operated as a constructive fraud or in an unjust manner must be presented.” *Paynesville Farmers Union Oil Co. v. Ever Ready Oil Co.*, 379 N.W.2d 186, 189 (Minn. App. 1985), *review denied* (Minn. Mar. 14, 1986).

In its order following the second stage of the trial, the district court performed a detailed and thorough analysis under both prongs of the *Victoria Elevator* test. The district court determined that the following circumstances did not favor veil-piercing: M&M Systems was sufficiently capitalized; nonpayment of dividends did not benefit Gustafson or harm Mallberg; M&M Systems was not insolvent at the time it incurred a debt to Mallberg; and M&M Systems did not exist merely as a façade. The district court also determined, though, that the following three circumstances did favor veil-piercing: M&M Systems largely failed to maintain corporate records; Gustafson siphoned money from M&M Systems; and Ann Gustafson was a nonfunctioning director and officer of M&M Systems. The district court then determined that an element of fundamental unfairness

existed. It concluded that the three factors favoring veil-piercing, together with the element of fundamental unfairness, warranted piercing the corporate veil to hold Gustafson personally liable.

Appellants argue that the district court erred for several reasons. They made substantially similar arguments to the district court in their posttrial motions, and the district court clarified its analysis. Appellants argue that both the first and second prongs of the *Victoria Elevator* test are unsatisfied. We address each prong in turn.

A. First prong of the *Victoria Elevator* test

Appellants challenge several of the district court’s findings regarding the factors in the first prong and challenge the district court’s balancing of those factors.

(1) Siphoning funds

Appellants challenge the factual finding that Gustafson “siphoned” money from M&M Systems. We review the finding for clear error. *Cole*, 766 N.W.2d at 339. Appellants specifically argue that the district court erroneously found that M&M Systems’ accountant testified Gustafson was “overcompensated for mileage in the amount of \$31,256.62.” This finding, they argue, reflects a “misunderstanding of [the accountant’s] testimony” and ignores that Gustafson drove extensively for sales work using a personal vehicle. Appellants also argue that the monthly withdrawals were not siphoning because they were supported by fair consideration, citing *Snyder Elec. Co. v. Fleming*, 305 N.W.2d 863, 868 (Minn. 1981) (“No siphoning of assets occurs if the transactions are for fair consideration”).

The district court, in its order denying appellants’ posttrial motions, explained that appellants’ argument “mischaracterizes” its findings. The specific determination the district court made regarding excessive expense reimbursement was that M&M Systems’ accountant’s testimony—which the district court found to be credible—“established that [Gustafson] received reimbursement *in excess of what was properly calculated.*” (Emphasis added.) The district court’s initial veil-piercing order also noted that the accountant’s “calculations led him to conclude that [Gustafson] was overcompensated for mileage in the amount of \$31,256.62 (\$1,518.77 + \$26,714.03 + \$3,023.82).” The district court later explained that this determination was based on *both* the accountant’s testimony *and* Mallberg’s exhibit 13, a document that the accountant prepared in 2017 to track loans from M&M Systems to its shareholders. The accountant testified that exhibit 13 showed an outstanding loan from M&M Systems to Gustafson of \$26,714.03 in 2015, and counsel asked the accountant if this was “because Mr. Gustafson paid or advanced too many expenses.” The accountant replied: “I believe [Gustafson] was estimating. He hadn’t done an actual calculation of what was owed to him. And as the year went on, he was estimating that was due to him at the end of the year.” The exhibit itself contains three entries described as “record net amount owed by [Gustafson] attributable to mileage reimbursement received in excess of computed amount of reimbursement.” The corresponding amounts are \$1,518.77, \$26,714.03, and \$3,023.82, which the district court added together to get of \$31,256.62.

Based on M&M Systems’ accountant’s testimony, in conjunction with exhibit 13, the district court’s finding that the accountant’s “calculations led him to conclude that

[Gustafson] was overcompensated for mileage in the amount of \$31,256.62 (\$1,518.77 + \$26,714.03 + \$3,023.82)” is supported by the record. We note that, even if this specific finding were clearly erroneous, the finding is only part of the basis for the district court’s determination that Gustafson siphoned funds from M&M Systems. The district court’s order makes clear that it found it significant that Gustafson retained 50 checks payable to M&M Systems—written by Ann Gustafson as reimbursement for M&M Systems paying the Gustafsons’ bill for their personal American Express card—and that Gustafson did not intend to cash those checks. The district court also emphasized credibility problems with Gustafson’s testimony about the reimbursements he believed he had been entitled to. Thus, even if the district court did err regarding the accountant’s testimony, any error was harmless.

(2) Nonfunctioning officer and director

Appellants also argue that the district court should not have found that Ann Gustafson’s nonfunctioning as “a shareholder” of M&M Systems weighed in favor of piercing the corporate veil. While conceding that Ann Gustafson left M&M Systems around 2002 to work elsewhere and that she ceased any involvement with running M&M Systems in the fall of 2014, appellants argue that being a “passive shareholder” does not support piercing the corporate veil because shareholders do not owe any obligations to the corporation or its creditors.

Appellants’ argument misconstrues the district court’s finding. The inquiry was not whether Ann Gustafson was a passive *shareholder*, but whether she was a nonfunctioning *officer/director*. The district court found that M&M Systems’ corporate records listed Ann

Gustafson as director, Chief Financial Officer, Vice President, and Secretary-Treasurer of M&M Systems, but that Ann Gustafson became uninvolved with M&M System's day-to-day business operations in 2002. In fact, Ann Gustafson was unaware until the trial in this matter that M&M Systems had failed to file tax returns for years 2011 through 2017. The district court's finding on this factor is supported by the record.

(3) Corporate formalities

Appellants argue that the district court erroneously determined that M&M Systems failed to abide by corporate formalities. They assert that the fact that a "board of directors never met does not mean the directors are not abiding by corporate formalities," quoting *Almac, Inc. v. JRH Dev., Inc.*, 391 N.W.2d 919, 923 (Minn. App. 1986), *review denied* (Minn. Oct. 17, 1986). Again, though, the evidence in the record *as a whole* supports the conclusion that M&M Systems lacked corporate formalities. The district court summarized the findings that support this conclusion in its order denying appellants' posttrial motions:

The Court found that "M&M maintained its Articles of Incorporation and a Certificate of Incorporation with the Secretary of State. Besides those documents and its first minutes, the business produced no other business records between 1991 and 2015." The Court also noted, "Before 2017, M&M had not filed corporate income tax returns in six years." [M&M Systems' accountant] was unaware of Ann's status as a 50% shareholder. Despite the fact that Mallberg and Mark agreed to a partnership-like relationship under the Pre-2013 Agreement . . . no shares were issued to Mallberg and the partnership arrangement was never formally recognized. The Court also recognized that Mark and Ann *did* meet informally to discuss business, but never produced any record of proceedings impliedly required by M&M's bylaws. This Court held the lack of corporate formality was not determinative in itself, but weighed in favor of piercing the corporate veil.

(Citations omitted.) Appellants have not shown how the district court erred by determining that the corporate formalities factor, while “not determinative,” weighed in favor of piercing the corporate veil.

(4) Balance of factors

Appellants also argue that the district court abused its discretion because “[t]he majority of factors weigh powerfully against veil-piercing.” They argue that the factors that the district court determined did not favor veil-piercing are the “most important” ones, and that the determination that the first prong is satisfied is unsupported by the weight of the evidence. *Victoria Elevator* does not mandate, though, that a specific number of factors be present before a court may find the first prong satisfied. 283 N.W.2d at 512. The supreme court explained that disregard of the corporate entity requires that “a number of these factors be present,” and it emphasized that the concern is “with reality and not form, with how the corporation operated and the individual defendant’s relationship to that operation.” *Id.* (quotation omitted). Though the evidence did not suggest that Gustafson was unlawfully diverting large amounts of corporate funds to himself, it did show an intermingling of personal and corporate funds that the district court found significant. The district court explained that three *Victoria Elevator* factors supported piercing the corporate veil: “(1) Most importantly, [Gustafson] siphoned money from M&M; (2) M&M failed to observe numerous corporate formalities; and (3) Ann was a nonfunctioning officer/director at all times relevant to this litigation.” It noted that it did not consider any single factor as independently sufficient, but “[r]ather, the three factors taken together demonstrate a closely intertwined relationship between the corporate entity of M&M and [Gustafson] as

an individual.” We conclude that the district court acted within its discretion by determining that the first prong of the *Victoria Elevator* veil-piercing test was satisfied.

B. Second prong of the *Victoria Elevator* test

As to the second prong, appellants argue that the district court erroneously concluded that an element of fundamental unfairness existed because it relied on improper factors. We address each of these factors in turn.

(1) Statutory double-damages provision

Appellants argue that the district court erroneously “concluded the judgment against M&M Systems for wage penalties⁶ under Minn. Stat. § 181.03 is proof of injustice, warranting veil-piercing.” They contend that there is no precedent supporting the proposition that statutory double damages “dispose[] of the second prong of the *Victoria Elevator* test.”

This argument misconstrues the import that the district court gave to the statutory provision. While Mallberg may have argued in the district court that the statute’s damages provision conclusively demonstrated injustice, the district court’s analysis was more nuanced:

Mallberg argues that the Minnesota Legislature’s inclusion of the penalty provision in Minn. Stat. § 181.03, subd. 3 (doubling liability for twice the amount in dispute) demonstrates that delaying payment is fundamentally unfair. The Court accepts Mallberg’s argument that the statutory penalty contemplates that there is some degree of basic injustice in delayed or reduced payment. But there is nuance to the law. Unlike Subdivision 1, which incorporates an intent to defraud,

⁶ We use the term “penalty” to describe the damages provision in Minn. Stat. § 181.03 only when quoting the parties and the district court.

Subdivision 2 (governing commissions) imposes double damages merely “if the result is to delay or reduce the amount of payment.” [The first judge] found that [appellants] actually *attempted* to delay and reduce the amount of Mallberg’s commissions. [That] finding implies that M&M—under Mark’s exclusive authority—operated in a way that was intentionally disadvantageous to Mallberg. There is contextual evidence to support actual unfair operation. [The district court’s] Order for Summary Judgment determined that there was no genuine dispute as to the existence of the Parties 2013 Agreement, or to its allowance of at least 70% commissions on service work. This fact was undisputed. [Gustafson] still caused M&M to operate in a way to withhold an undisputedly earned commission, even where a remaining percentage of the commission was disputed.

Nothing in the district court’s order suggests that it treated the statutory double-damages provision as conclusively satisfying the injustice prong. It considered the arguments and afforded M&M Systems’ intentional wage-withholding appropriate weight. We discern no abuse of discretion.

(2) Exhaustion of resources

Appellants also contend that the district court improperly “focused on M&M Systems’ inability to pay as a reason to find injustice.” Again, the district court’s order does not accord with appellants’ contention. As the district court explained in the order denying appellants’ posttrial motions, consistent with its veil-piercing order:

The Court described the exhaustion of M&M’s assets during litigation as merely “problematic,” due to [Gustafson]’s acknowledgement of the 70% term and M&M’s nonpayment to Mallberg based on any calculation. This is not heavy reliance, and the Court did not rely on exhaustion of corporate funds through litigation in its conclusion. Instead, the Court relied on the following circumstances as establishing an element of unfairness: (1) [Gustafson]’s personal animus toward Mallberg; (2) [appellants’] payment of all other

creditors to Mallberg's exclusion *despite* an admitted 70% commission term; and (3) the refusal of post-May 2014 payments *despite* an admitted 70% commission term.

(Citations omitted.) Under the applicable case law, “veil piercing is grounded in equity and intended to prevent abuse of corporate protections.” *Cole*, 766 N.W.2d at 339. To satisfy the fundamental-unfairness prong, there needs to be “evidence that the corporate entity has been operated as a constructive fraud *or in an unjust manner*.” *Paynesville Farmers Union Oil Co.*, 379 N.W.2d at 189 (emphasis added). The record shows that, rather than treating any one factor as dispositive, the district court carefully examined a number of circumstances and determined that Gustafson had operated M&M Systems in an unjust manner.

(3) Personal animus

Finally, appellants argue that the district court improperly considered Gustafson's personal animus towards Mallberg because “animus” is not a factor in the *Victoria Elevator* test. But there are not explicit factors for the injustice prong of the *Victoria Elevator* test. Rather, it is a flexible inquiry aimed at determining whether “the corporate entity has been operated as a constructive fraud *or in an unjust manner*.” *Paynesville Farmers Union Oil Co.*, 379 N.W.2d at 189. The district court's order does not suggest that it gave any improper weight to personal animus. The district court noted Gustafson's “complete disdain” towards Mallberg, as evidenced by Gustafson's testimony that he “hated his guts,” as one circumstance suggesting Gustafson operated M&M Systems in an unjust manner to deprive Mallberg of the payments owed to him.

In sum, the district court carefully examined relevant circumstances in determining that an element of injustice existed to warrant piercing the corporate veil. We conclude that the district court acted within its discretion.

Affirmed.