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Contracts: There Can Be No Mistake—A Call for the Reformation of the Minnesota Supreme Court's Recent Decision in Sci Minnesota Funeral Services, Inc. V. Washburn-Mcreavy Funeral Corp., 795 N.w.2d 855 (minn. 2011)

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I. INTRODUCTION

The Minnesota Supreme Court recently revisited the issue of equitable relief for mistake in SCI Minnesota Funeral Services, Inc. v. Washburn-McReavy Funeral Corp. (SCI).1 SCI involved a stock sale agreement—a contract for the sale of a business in corporate form.2 Both parties to the agreement, the buyer and seller, were mistaken about the exact mix of assets that were titled to the corporation being sold.3 When this mistake was discovered after the sale was complete, the seller sought equitable relief to regain title to the particular assets about which the parties were mistaken.4

The framework that courts in the United States have adopted to resolve when mistakes give rise to equitable relief is historically rooted in medieval England.5 Notwithstanding this ancient heritage, the doctrine of equitable relief for mistake has long suffered from specious judicial articulation6 and inconsistent application.7 Generally, equitable relief for a mistake that taints a

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1. 795 N.W.2d 855 (Minn. 2011).
2. Id. at 858.
3. Id.
4. Id. at 859.
5. See infra note 23.
6. See infra note 41.
7. See infra note 42 and accompanying text. Courts have struggled much more broadly to properly apply their equitable powers. The evolution of the federal courts’ application of equitable doctrines to cases and controversies involving the federal tax laws provides an excellent display of this struggle. Throughout history, equitable powers were used to shield aggrieved people by providing relief where the law inflicted an unjust result. Historically, equitable powers were never used as a sword against the people. Since 1935, however, the federal courts have turned this venerable history of equitable jurisdiction on its head. Despite the Solomonic import of Justice Oliver Wendell Holmes Jr.’s famous statement in Rock Island, A. & L. R. Co. v. United States, 254 U.S. 141, 143 (1920), that when complying with the federal tax laws, taxpayers must “turn square corners,” federal courts have used various equitable powers to inflict liability on taxpayers who turned these corners at perfect right angles. The reason for this frightening change to the historic application of equitable powers is, no doubt, subject to considerable differences of political opinion. Whatever may be the true motives of federal courts for using their powers of equitable jurisdiction as a sword, it is clear that taxpayers, notwithstanding their having turned “square
contractual agreement takes shape through the judicial reformation or rescission of that agreement. The idea is that equitable relief, “such as is required by the circumstances, may be granted from the consequences of a mistake of any fact which is a material element of the transaction . . . if there be no adequate remedy at law.” As a result, Minnesota courts may either rescind an agreement tainted with mistake or reform it so that the agreement conforms to the objectively manifested intentions of the parties.

Yet questions remain as to how far into the form of an agreement a Minnesota court will cast its gaze in search of mistakes for which relief will be granted. In particular, there is the question of whether a Minnesota court will look through the corporate form when determining whether to exercise equitable powers and provide relief for mistakes about the particular composition of assets and liabilities of a business in corporate form whose stock is being sold.

As historically formulated in Minnesota, “[e]quity’s vision is not circumscribed by formal instruments, but extends through matters of form to the heart of the transaction.” The Minnesota Supreme Court’s decision in SCI, however, strongly suggests that no type of equitable relief will ever reach through the corporate form to remedy mutual mistakes about the assets and liabilities of a corporation—no matter what longstanding judicial principles of equity have to say.

This note first examines the history of and policies underlying equitable remedies, including the types of mistakes for which courts will provide equitable relief. It then details the Minnesota Supreme Court’s holding in SCI, including the supreme court’s corners” in good faith, have been made to bear tax liabilities at the hands of federal courts applying such (formerly) equitable doctrines as “substance over form,” “economic substance,” “sham transaction,” and “step transaction.” See, e.g., Wells Fargo & Co. v. United States, 641 F.3d 1319 (Fed. Cir. 2011); Coltec Indus., Inc. v. United States, 454 F.3d 1340 (Fed. Cir. 2006), cert. denied, 549 U.S. 1206 (2007); Jade Trading, LLC v. United States, 80 Fed. Cl. 11 (2007), aff’d in part, rev’d in part, vacated in part as moot, 598 F.3d 1372 (Fed. Cir. 2010). For a comprehensive articulation about how federal courts have turned equitable jurisdiction on its head when dealing with the federal tax laws, see JASPER L. CUMMINGS, JR., THE SUPREME COURT’S FEDERAL TAX JURISPRUDENCE 171–89 (2010).

8. See infra notes 37–39 and accompanying text.
10. See infra notes 48, 53 and accompanying text.
12. See infra Part II.
express refusal to extend the bright-line and form-focused reasoning of prior case law on rescission to the reformation of stock sale agreements. 13 An analysis of the SCI decision follows the description of the case. 14 This analysis argues that the supreme court’s express refusal in SCI to extend to reformation the bright-line and form-focused reasoning of prior case law on rescission is directly contradictory to the reasoning the court ultimately adopted to deny the equitable remedy of reformation. Finally, this note concludes that the supreme court’s apparent distaste for looking through the form—the corporate form—of the stock sale in SCI is at odds with longstanding judicial principles of equity, effectively foreclosing any type of meaningful equitable relief for stock sales tainted with mutual mistake where no fraud or inequitable conduct is involved. 15

II. HISTORY

A. The Historical Development of Equitable Remedies

Courts and judges have often strayed from strict adherence to the so-called “black letter law” and have provided aggrieved parties with relief based on the intent of the law and on a sense of justice. 16 This judicial adaptability is called “equity” or equitable relief. 17 Courts and judges have exercised these equitable powers, also called equitable jurisdiction, for thousands of years. 18 For instance, magistrates, or praetors, provided equitable relief to ancient Romans. 19 After the Roman Empire collapsed, the courts in much

13. See infra Part III.
14. See infra Part IV.
15. See infra Part V.
16. See 1 WILLIAM BLACKSTONE, COMMENTARIES *61–62 (citation omitted) (“From this method of interpreting laws, by the reason of them, arises what we call equity; which is thus defined by Grotius, ‘the correction of that, wherein the law (by reason of its universality) is deficient.’ . . . [A]s Grotius expresses it, ‘lex non exacte definit, sed arbitrio boni viri permittit.’ [The law does not define exactly, but leaves something to the discretion of a just and wise judge.]”).
17. Id.
19. 3 BLACKSTONE, supra note 16, at *49 (footnotes omitted) (“This distinction between law and equity, . . . was perfectly familiar to the Romans; . . . but the power of both centered in one and the same magistrate, who was equally intrusted [sic] to pronounce the rule of law, and to apply it to particular cases by the principles of equity.”); see also KAMES, supra note 18, at 13.
of continental Europe carried on the exercise of equitable powers in the Roman tradition. The development of equity in England, however, is most pertinent to the development of equity in the United States because, upon statehood, colonial American courts adopted much of the same equitable jurisdiction as that exercised by the English Court of Chancery.

The English Court of Chancery was presided over by the Office of the Chancellor. The Lord Chancellor, an officer of the King of England, was delegated "a very considerable portion of the royal prerogative authority pertaining to the administration of justice." This authority allowed the Chancellor to ameliorate "the rigor of the common law, in all cases in which natural justice, equity and

20. A. H. Marsh, History of the Court of Chancery and of the Rise and Development of the Doctrines of Equity 13 (1890) ("[W]hen the modern Kingdoms of Europe were established upon the ruins of the [Roman] Empire almost every state preserved its Chancellor, with different jurisdictions and dignities according to their different constitutions."); see also 3 Blackstone, supra note 16, at *49 n.a (citation omitted) ("Thus too the parliament of Paris, the court of session in Scotland, and every other jurisdiction in Europe of which we have any tolerable account, found all their decisions as well upon principles of equity as those of positive law.").

21. Kames, supra note 18, at 4 ("The establishment of the court of chancery in England, made it necessary to give a name to the more ordinary branch of law, that is, the province of the common or ordinary courts; it is termed, the Common Law, and in opposition to it, the extraordinary branch devolved on the court of chancery it termed Equity.").

22. See, e.g., El Paso Natural Gas Co. v. TransAmerican Natural Gas Corp., 669 A.2d 36, 39 (Del. 1995) (stating that the Delaware Court of Chancery "has only that limited jurisdiction that the Court of Chancery in England possessed at the time of the American Revolution, or such jurisdiction as has been conferred upon it by the Delaware General Assembly"); Walker v. Morris, 14 Ga. 323, 327 (1853) ("Equity Jurisprudence generally embraces the same matters of jurisdiction and modes of remedy, as exist in England."); Amelung v. Seekamp, 9 G. & J. 468, 468 (Md. 1838) ("The principles and powers of the court of chancery in England, at the time of the revolution, not altered by our legislation, nor inapplicable to our political institutions, are the same by which the court of chancery of Maryland is governed."); Jones v. Boston Mill Corp., 21 Mass. (4 Pick.) 507, 527 (1827) (stating that Massachusetts courts have "all the authority and power which is enjoyed or exercised by tribunals which entertain [equitable] jurisdiction in England"); Wells v. Pierce, 27 N.H. 503, 512 (1853) (noting that the courts of New Hampshire exercise jurisdiction "coextensive with those of the court of chancery, and other courts of equity in England"); Mattison v. Mattison, 20 S.C. Eq. (1 Strob. Eq.) 387, 388 (1847) (noting that the equitable powers of the Court of Appeals of Equity of South Carolina was "confined to cases of Chancery cognizance in Great Britain").

23. See Marsh, supra note 20, at 13–15. According to Marsh, the English Court of Chancery was officially recognized through an act of King Edward III in the mid-fourteenth century as a regular English court with jurisdiction over matters of "grace." Id. at 29–30. Prior to this official recognition, the jurisdiction of the Court of Chancery was broader, and mixed with the common law. Id. at 17.

24. Id. at 14.
good conscience required his intervention.”

In this way, the powers of the Court of Chancery were lenitive to the powers of the English courts of common law—courts whose authority was strictly limited to providing remedies created by some positive English law, such as a writ or a statute.

B. The Purpose and Scope of Equitable Remedies

It is evident, then, that equitable remedies were founded in a sense of justice, where adherence to the black letter law created a result believed to be unjust or inconsistent with the intent of the law’s maker. In order to reach this type of justice, equitable remedies were compelled to develop unhindered by formalities because they were intended to address the substance of the circumstances of particular cases. Given the broad nullifying effects that sweeping judicial exercises of equitable powers could have on the black letter law, however, courts established rules limiting their use of equitable remedies to particular judicially defined circumstances. One such circumstance is the occasion where a written contractual agreement does not reflect the objectively manifested intentions of the parties to that agreement.

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25. Id.
26. Id. at 30.
27. 3 BLACKSTONE, supra note 16, at *429 ("Equity then, in it's [sic] true and genuine meaning, is the soul and spirit of all law: positive law is construed, and rational law is made, by it. In this, equity is synonymous to justice; in that, to the true sense and sound interpretation of the rule.")
28. 1 GEORGE SPENSE, THE EQUITABLE JURISDICTION OF THE COURT OF CHANCERY 390 (1846) ("In the Court of Chancery, no writ or formula imposed any fetter of form; and the court not being tied to forms, was able to modify the relief given by its decrees to answer all the particular exigencies of the case fully and circumstantially . . . .").
29. See KAMES, supra note 18, at 13 (“To determine every particular case, according to what is just, equal, and salutary, taking in all circumstances, is undoubtedly the idea of a court of equity in its perfection; and had we angels for judges, such would be their method of proceeding, without regarding any rules . . . but men are liable to prejudice and error, and for that reason, cannot safely be trusted with unlimited powers. Hence, the necessity of establishing rules, to preserve uniformity of judgment in matters of equity as well as of common law . . . the necessity is perhaps greater in the former, because of the variety and intricacy of equitable circumstances.”); see also 1 BLACKSTONE, supra note 16, at *62 (“[T]he liberty of considering all cases in an equitable light must not be indulged too far, lest thereby we destroy all law, and leave the decision of every question entirely in the breast of the judge.”).
30. KAMES, supra note 18, at 132–33 (“In applying the rules of equity to . . . covenants, what comes first under consideration is, whether the [intent of the parties] will be fully or fairly taken down in the writing . . . . The sole purpose of the writing is to bear testimony of [the intent of the parties]; and if that testimony
Though the common law adhered strictly to the words used in the parties’ written agreement, some form of equitable relief might be attained by looking beyond the written words and ascertaining the intentions of the parties. English courts, as well as courts in the United States, began providing equitable relief in these situations because people often express their intentions with words used imprecisely and out of context. Not every failure of a written agreement to express the intentions of the parties will be afforded equitable relief, however. Failures qualifying for relief must be rooted in particular judicially recognized grounds, such as that of mistake.

C. Mistake as a Ground for Equitable Relief

"From the time when jurisdiction was first formally delegated to the Chancellor [of England] by the crown, mistake has played a most important part [in] . . . the exercise of the jurisdiction in awarding equitable remedies."

Mistake has long been used by courts exercising their equitable powers, both in England and in the United States, as a ground to reform or rescind contractual agreements. Even prove erroneous, it can avail nothing against the truth. . . . [E]quitable jurisdiction . . . declares for [the intent of the parties] against every erroneous evidence of it.

31. Id. at 132 (“[I]n common law, the words are strictly adhered to, [but] such imperfections are remedied by a court of equity. [Equity] admits words and writings to be the proper evidence of will; but excludes not other evidence.”).
32. Id. at 132–33 (“[C]lauses in writings are sometimes ambiguous or obscure, sometimes too limited, sometimes too extensive. . . . Sensible that words and writing are not always accurate, [equitable jurisdiction] endeavors to reach will . . . however it may differ from the words.”).
33. See, e.g., Gartner v. Eikill, 319 N.W.2d 397, 398 (Minn. 1982) (“The general rule is that a court may order an agreement rescinded if both parties were mistaken with respect to facts material to the agreement.”); Nichols v. Shelard Nat’l Bank, 294 N.W.2d 730, 734 (Minn. 1980) (discussing three elements necessary for reformation of written instruments).
34. KAMES, supra note 18, at 179 (“[E]quity will afford relief against . . . error.”).
35. 3 JOHN NORTON POMEROY, A TREATISE ON EQUITY JURISPRUDENCE § 838 (Spencer W. Symons ed., 5th ed. 1941) (citations omitted).
36. Id.; see also 1 JOSEPH STORY, COMMENTARIES ON EQUITY JURISPRUDENCE AS ADMINISTERED IN ENGLAND AND AMERICA § 152 (Isaac F. Redfield ed., 10th ed. 1870) (“One of the most common classes of cases, in which relief is sought in equity, on account of a mistake of facts, is that of written agreements, either executory or executed. Sometimes by mistake, the written agreement contains less than the parties intended; sometimes it contains more; and sometimes it simply varies from their intent by expressing something different in substance from the truth of that intent. In all such cases if the mistake is clearly made out by proofs entirely
before Minnesota’s statehood, it was not until 1853 that Minnesota courts exercised equitable jurisdiction to reform or rescind contractual agreements tainted with mistake.

It is not every type of mistake that will give rise to equitable relief, however. Composing an accurate and practical definition of exactly which types of mistakes are sufficient to justify equitable relief has troubled courts since the doctrine of relief for mistake first emerged. In fact, courts have developed various and sometimes disparate theories that attempt to explain which mistakes equity will relieve. Adding to this judicial fray are cases of mistake involving similar fact patterns, which have been decided in different ways by courts in different jurisdictions.

Generally speaking, a mistake is “that result of ignorance of law or of fact which has misled a person to commit that which, if he had not been in error, he would not have done.” Absent fraud or inequitable conduct, all parties must be mistaken about the same subject matter in order to obtain equitable relief. Additionally, the types of mistakes which may be relieved through reformation are different from those which may be relieved through

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37. See Swogger v. Taylor, 243 Minn. 458, 463, 68 N.W.2d 376, 381–82 (1955). The district courts of the territory of Minnesota “were initially vested with, and exercised, full chancery powers . . . . The territorial act of 1853, abolishing separate chancery courts and vesting all equity powers in the law courts, did not impair the court’s inherent equitable powers.” Id. (citing Stone v. Bassett, 4 Minn. 298, 302 (1860)). The Minnesota State Constitution has preserved this equitable jurisdiction in Minnesota district courts. See MINN. CONST. art. VI, § 3; Swogger, 243 Minn. at 463, 68 N.W.2d at 382.

38. Buckley v. Patterson, 39 Minn. 250, 252, 39 N.W. 490, 491 (1888) (“It is well established that a party can be relieved of a contract, founded in his mistake . . . . And this may be done . . . . in an action to correct or cancel.” (citing Benson v. Markoe, 37 Minn. 30, 39 N.W. 38 (1887))).


40. See, e.g., Kowalke v. Milwaukee Elec. Ry. & Light Co., 79 N.W. 762, 763 (Wis. 1899) (“Indeed, no definition or general rule has been invented which is sufficient or accurate, except by immediately surrounding it with numerous exceptions and qualifications more important than itself.”).

41. See Note, Rescission of a Contract for a Mutual Mistake of Fact, 35 HARV. L. REV. 757, 758 (1922).


43. 1 STORRY, supra note 36, § 110 n.1.

44. See Blancharell v. Patterson, 64 Minn. 454, 456, 67 N.W. 356, 357 (1896).
rescission. In order to support the reformation of a written contractual agreement, a mistake must be made in reducing the parties’ agreement to writing. In Minnesota, a party seeking the reformation of a written agreement for mistake must show by clear and convincing evidence that three specific elements are satisfied. First, the party must show that there was a valid agreement between the parties and that this agreement objectively expressed the parties’ intentions. Next, the party seeking reformation must show that the written agreement fails to reflect the parties’ actual agreement. Finally, the party seeking reformation must show that this failure was due either to a mutual mistake of the parties to the agreement or to a mistake of one party accompanied by the fraudulent or inequitable conduct of the other party.

To support rescission, a mistake must be mutual and must go to the essence of the subject matter material to the transaction. In Minnesota, a party seeking rescission of a written contractual agreement for mutual mistake must show that, at the time of the parties’ agreement, both parties were mistaken about facts material to the agreement. Additionally, the party seeking rescission cannot bear the risk of the mistake.

45. See Abbot, supra note 42, at 609–10.
47. Nichols v. Shelard Nat’l Bank, 294 N.W.2d 730, 734 (Minn. 1980); see also Blancharel, 64 Minn. at 456, 67 N.W. at 357.
48. Nichols, 294 N.W.2d at 734.
49. Id. The failure must arise either through a scrivener’s error or through the failure of the parties’ agreed-upon language to reflect their actual intent. See Segerstrom v. Holland Piano Mfg. Co., 155 Minn. 50, 52, 192 N.W. 191, 192 (1923). There is no requirement that the written agreement be ambiguous. Metro Office Parks, 295 Minn. at 353, 205 N.W.2d at 124.
50. Nichols, 294 N.W.2d at 734.
51. See Gartner v. Eikill, 319 N.W.2d 397, 399 (Minn. 1982); see also RESTATEMENT (SECOND) OF CONTRACTS § 152(1) (1981) (“Where a mistake of both parties at the time a contract was made as to a basic assumption on which the contract was made has a material effect on the agreed exchange of performances, the contract is voidable by the adversely affected party unless he bears the risk of the mistake . . . .”).
52. Winter v. Skoglund, 404 N.W.2d 786, 793 (Minn. 1987); see also RESTATEMENT (SECOND) OF CONTRACTS § 152(1) (1981). A fact is material if it goes to the central nature of the transaction. Gartner, 319 N.W.2d at 399.
53. Winter, 404 N.W.2d at 793 (citing Gartner, 319 N.W.2d at 398–99); RESTATEMENT (SECOND) OF CONTRACTS § 152(1) (1981).
D. Equitable Relief in Minnesota for Mistakes in Stock Sale Agreements

In the 1919 case of Costello v. Sykes, the Minnesota Supreme Court adopted the bright-line and form-focused rule that stock sale agreements tainted by mistake may not be rescinded absent fraud or inequitable conduct. Costello involved the sale of the stock of a bank from which bank employees had embezzled large sums. The bank’s accounting books and records portrayed the bank as having a book value of $136 per share. Due to the enormity of the employees’ defalcations, however, the bank actually had a book value of only $60 per share. Apparently, neither the purchaser nor the seller of the bank stock knew about the embezzlement. The supreme court ruled that the stock sale agreement in Costello was not tainted by mistake because the buyer got exactly that for which he had bargained: the bank stock. The supreme court followed the bright-line and form-focused reasoning from an old English case in setting out the rule that when the sale of corporate stock is the subject matter of a written agreement, any mutual mistake about the corporation’s assets and liabilities will not give rise to rescission absent fraud, concealment of facts, or a mistake as to the identity of the stock. Exactly what rule applies in Minnesota to give rise to the reformation of stock sale agreements for mutual mistakes about corporate assets and liabilities had to wait for SCI.

III. The SCI Decision

SCI Minnesota Funeral Services, Inc. (“SCI”) owned cemeteries and funeral home businesses with and through its corporate subsidiaries, including the Crystal Lake Cemetery Association (“Crystal Lake”). Crystal Lake owned three cemeteries and funeral home businesses, all located in Minnesota.

54. 143 Minn. 109, 172 N.W. 907 (1919).
55. Id. at 114, 172 N.W. at 909.
56. Id. at 111, 172 N.W. at 908.
57. Id.
58. Id.
59. Id.
60. Id. at 112, 172 N.W. at 908.
62. Id. at 111, 114, 172 N.W. at 908–09.
63. SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp., 795 N.W.2d 855, 858 (Minn. 2011).
64. Id. The three cemetery and funeral home businesses were the Crystal
Early in 2005, SCI began seeking buyers for several of its businesses, including the businesses held by Crystal Lake. On April 1, 2005, SCI executed a letter of intent with Corinthian Enterprises, LLC (“Corinthian”) for the sale of several businesses. On July 20, 2005, SCI sold to Corinthian the several businesses, including those held by Crystal Lake, in part under an asset purchase agreement and in part under a stock purchase agreement. Crystal Lake was sold pursuant to the stock purchase agreement because SCI and Corinthian believed that Minnesota law prohibited the direct asset acquisition of cemeteries operated for profit. Corinthian paid $1 million for the Crystal Lake stock. On the very same day it made this purchase, Corinthian turned around and sold to Washburn-McReavy Funeral Corporation (“Washburn”) most of the assets and all of the Crystal Lake stock that it had purchased from SCI.

Lake Cemetery/Crematory in the city of Minneapolis, Dawn Valley Funeral Home/Memorial Park in the city of Bloomington, and Glen Haven Memorial Gardens in the city of Crystal. 

65. Id.
67. Id.
68. Id. The supreme court noted that the Crystal Lake stock purchase was treated by the parties thereto as an asset sale for tax purposes. SCI Minn. Funeral Servs., 795 N.W.2d at 858. This means that the parties made an election, provided for by Internal Revenue Code § 338(h)(10), to treat the stock sale as an asset sale for federal income tax purposes. This election must be made jointly by both parties. It is designed to allow the buyer to purchase shares of the target business and yet apply the purchase price (and assumed liabilities) to “step up” the tax basis of the target business’s assets. This treatment can benefit the buyer by increasing the buyer’s near-term tax depreciation and amortization deductions. The parties are both required to report information regarding the § 338(h)(10) election, including the aggregate fair value of the assets transferred, to the Internal Revenue Service. See MARTIN D. GINSBURG & JACK S. LEVIN, MERGERS, ACQUISITIONS, AND BUYOUTS ¶ 206 (2011). Presumably, both SCI (or SCI’s ultimate parent) and Washburn-McReavy failed to report any fair value for the two vacant properties which they had not intended to transfer. Subsequently, and notwithstanding the stipulation of both parties that they did not know the two properties were titled to Crystal Lake, additional evidence that the parties’ actual agreement did not include the two valuable properties is likely to lie within each party’s federal income tax return(s) that covered the year of the transaction.
69. SCI Minn. Funeral Servs., 795 N.W.2d at 858. The Minnesota Supreme Court suggests that this conclusion might have been in error. See id. The Minnesota Court of Appeals, on the other hand, appears to have regarded the parties’ conclusion as true. See SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp., 779 N.W.2d 865, 868, 871 (Minn. Ct. App. 2010).
70. SCI Minn. Funeral Servs., 795 N.W.2d at 858.
Corinthian sold the Crystal Lake stock to Washburn for $1 million by assigning to Washburn all rights under the stock purchase agreement that Corinthian had just executed with SCI.\(^{72}\)

The Crystal Lake stock sale agreement between SCI and Corinthian—the same agreement Corinthian later sold and assigned to Washburn—specifically listed the three Minnesota cemetery properties held by Crystal Lake which were to be sold.\(^{73}\) Unbeknownst to SCI, Corinthian, or Washburn, Crystal Lake also held title to two vacant properties at the time of the stock sale, one in Minnesota and another in Colorado.\(^{74}\) At the time SCI sold the Crystal Lake stock, these properties were worth approximately $2 million,\(^{75}\) twice the amount paid to SCI for the Crystal Lake stock. Yet, they were not listed alongside the Minnesota cemetery properties in the Crystal Lake stock sale agreement.\(^{76}\) In fact, none of the parties intended the transfer of these two properties in the Crystal Lake stock sale.\(^{77}\)

At some point after the Crystal Lake stock sale was complete, SCI, believing that it still owned the two vacant properties, conducted title searches and discovered to its chagrin that Crystal Lake actually held title to both properties.\(^{78}\) SCI contacted Washburn, which was, as yet, apparently unaware that Crystal Lake held title to the properties, and requested that Washburn quitclaim the properties back to SCI.\(^{79}\) Washburn refused.

SCI then sued Washburn to recover the two properties, seeking the reformation or, alternatively, the rescission of the Crystal Lake stock sale agreement.\(^{80}\) The Minnesota District Court,

\(^{72}\) SCI Minn. Funeral Servs., 795 N.W.2d at 858. Washburn paid $6.5 million in total for all the assets and the Crystal Lake stock. Brief & Appendix of Respondents at 12–13. SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp., 795 N.W.2d 855 (No. A09-935).

\(^{73}\) SCI Minn. Funeral Servs., 795 N.W.2d at 858.

\(^{74}\) \textit{Id.}

\(^{75}\) \textit{Id.}

\(^{76}\) \textit{Id.} at 858–59. The court of appeals noted that the “stock-sale agreement between SCI and Corinthian provides for ‘[l]egal descriptions of all real property owned or leased by’ Crystal Lake, and the descriptions therein do not include the Burnsville and Colorado parcels.” SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp., 779 N.W.2d 865, 869 (Minn. Ct. App. 2010) (emphasis added) (quoting the stock sale agreement), \textit{aff’d}, 795 N.W.2d 855 (Minn. 2011).

\(^{77}\) SCI Minn. Funeral Servs., 795 N.W.2d at 859.

\(^{78}\) SCI Minn. Funeral Servs., 779 N.W.2d at 869.

\(^{79}\) SCI Minn. Funeral Servs., 795 N.W.2d at 859.

\(^{80}\) SCI Minn. Funeral Servs., 779 N.W.2d at 869.

\(^{81}\) SCI Minn. Funeral Servs., 795 N.W.2d at 859. Both SCI and Corinthian sued Washburn. For all practical purposes, however, SCI was the party truly
in summary judgment, held that SCI was not entitled to relief through either reformation or rescission. The district court concluded that reformation was not available for the stock sale agreement by analyzing the reformation claim under the traditional elements required by Minnesota case law. Then, citing Costello as precedent, the district court held that rescission was also not available to SCI for the stock sale agreement because “[u]nder Minnesota law, the stock sale of a corporation transfers all of the assets and liabilities unless specifically excluded.” A divided court of appeals affirmed but went further than the district court and extended the bright-line and form-focused rule from Costello to the reformation of stock sale agreements. SCI appealed these losses to the Minnesota Supreme Court.

In SCI, the Minnesota Supreme Court reaffirmed its holding in Costello, reasoning that a mutual mistake about a corporation’s assets and liabilities is not “of such a character as to give rise to a right to rescind,” as long as the “means of information are open alike to both and there is no concealment of facts or imposition.” Such a mistake, the court stated, “is one of value.” The supreme court also affirmed the district court’s reasoning under Costello that “[u]nder Minnesota law, the stock sale of a corporation transfers all of the assets and liabilities unless specifically excluded.” Once the court reaffirmed these rules from Costello, it stated simply that “Costello bars rescission in this case.”

82. Id.
84. Id.
85. See SCI Minn. Funeral Servs., 795 N.W.2d at 864.
86. Id. at 859.
87. Id. at 862 (quoting Costello v. Sykes, 143 Minn. 109, 111, 172 N.W. 907, 908 (1919)).
88. Id. (quoting Costello, 143 Minn. at 114, 172 N.W. at 909).
89. Id.
90. SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp., No. 19HA-CV-08-1902, 2009 WL 6371879 (Minn. Dist. Ct. Apr. 2, 2009) (emphasis added), aff’d, 779 N.W.2d 865 (Minn. Ct. App. 2010), aff’d, 795 N.W.2d 855 (Minn. 2011); see SCI Minn. Funeral Servs., 795 N.W.2d at 859 (affirming the district court’s decision that SCI was “not entitled to rescission based on mutual mistake because a stock sale transfers all assets and liabilities unless specifically excluded” (emphasis added)).
91. SCI Minn. Funeral Servs., 795 N.W.2d at 862. SCI argued that Costello should be overruled in the face of contrary case law from other jurisdictions, such
When it came to reformation for mutual mistake, however, the supreme court began by expressly disavowing the bright-line and form-focused rule from Costello, apparently summarily overruling the court of appeals’ extension of Costello to the reformation of stock sale agreements.92 The supreme court then recalled its precedent for prima facie cases of reformation, concluding that this precedent should still apply in the context of stock sale agreements.93 In applying this precedent, however, the supreme court produced essentially the same bright-line and form-focused analysis as in Costello to bar any equitable relief for stock sale agreements.94 Instead of relying upon Costello’s rule that a court will not look within the corporate form for mutual mistake in a stock sale agreement, the supreme court reasoned in SCI that there was no mutual mistake supporting relief through reformation because “under Minnesota law, when a business sells and transfers

as Clayburg v. Whitt, 171 N.W.2d 623 (Iowa 1969). Id. at 863. Clayburg “rejected ‘the proposition that the existence or non-existence of corporate assets is immaterial[,]’” holding “‘it was proper for the court to look beyond the form of the asset transferred (corporate stock) to the substance of the transfer (corporate assets and liabilities) in deciding whether there was a mutual mistake such as would justify refusing enforcement or rescission of the contract.’” Id. (quoting Clayburg, 171 N.W.2d at 626). The court in SCI responded that it would not overrule its precedent (Costello) unless it was “‘contrary to principles of equity, [was] at odds with some of our statements in other cases and did not promote good public policy.’” Id. at 863 n.5 (quoting Cargill, Inc. v. Ace Am. Ins. Co., 784 N.W.2d 341, 352–54 (Minn. 2010)).

92. Id. at 865 (“When the relief seeks to void the entire contract, the additional analysis from Costello . . . applies. But we have never used that additional analysis in the reformation context, where the relief does not seek to unwind the transaction but simply to modify it to reflect the parties’ actual intention. We likewise decline to do so here.” (citation omitted)).

93. Id. (“A party seeking reformation must prove that: (1) there was a valid agreement between the parties expressing their real intentions; (2) the written instrument failed to express the real intentions of the parties; and (3) this failure was due to a mutual mistake of the parties, or a unilateral mistake accompanied by fraud or inequitable conduct by the other party.”) (quoting Nichols v. Shelard Nat’l Bank, 294 N.W.2d 730, 734 (Minn. 1980))).

94. Regarding the equitable rescission of stock sale agreements for mutual mistake, the supreme court found the rule from Costello to be that “a sale of corporate stock may not be ‘rescinded merely because both parties were mistaken about the nature or extent of the assets or liabilities of the corporation’ as long as the ‘means of information are open alike to both and there is no concealment of facts or imposition.’” Id. at 862 (quoting Costello v. Sykes, 143 Minn. 109, 114, 172 N.W. 907, 909 (1919)). Regarding the equitable reformation of stock sale agreements for mutual mistake, the court noted, “When a business is sold through a stock transfer, the buyer assumes not only the assets of the corporation, but also the liabilities. This greater risk justifies greater protection for the stock purchaser.” Id. at 866 (quoting Specialized Tours, Inc. v. Hagen, 392 N.W.2d 520, 536 (Minn. 1986)).
all of its stock, it is selling all of its assets and liabilities, unless the business has expressed otherwise. The supreme court then proceeded to explain that principles of Minnesota agency law, as applied to a corporation under Minnesota corporate law, constructively imputed knowledge of the two vacant properties to SCI. This imputation, the court concluded, caused any mistake about the two properties to be, “as a matter of law,” a unilateral mistake—a mistake that does not qualify for relief through reformation.

Even though the supreme court found that SCI and Washburn agreed on all material facts at the time of the lawsuit, were both unaware that Crystal Lake held title to the two vacant properties at the time of the sale, and did not intend to include those properties in the sale, the court refused to look beyond the form of the stock sale when determining whether to exercise its equitable powers for a mutual mistake. Accordingly, the supreme court’s unanimous holding in SCI is that the parties to a stock sale agreement cannot, as a matter of law, obtain equitable relief through reformation for a mutual mistake about corporate assets and liabilities in the absence of fraud or inequitable conduct. In essence, SCI rules that if parties engage in the transfer of a business through a stock sale, the form of the sale controls to bar equitable relief for mutual mistake because the court will not look through the corporate form to the substance of what the parties intended to transfer in the sale.

95. Id. at 866.
96. Id.
97. Id.
98. Id. at 858.
99. Id.
100. Id. at 859.
101. Id. at 867 (“[T]he undisputed evidence establishes that appellants cannot prove that the stock sale agreement failed to express the true intentions of the parties because of a mutual mistake.”).
102. It is to this reasoning that, the dissent in the court of appeals decision argues:

[I]f form is always put over substance, any remedy available for mutual mistake would be placed out of the reach of those who would otherwise be entitled to one. A court should not abstain from applying mutual-mistake analysis simply because the underlying transaction was for corporate stock rather than another kind of asset.

IV. ANALYSIS OF THE SCI DECISION

Form-over-substance permeates the entire SCI decision. In SCI, the Minnesota Supreme Court began its reasoning on the right track by expressly refusing to apply “the additional analysis from Costello, which focuses on the form . . . of the transaction” outside the realm of the rescission of stock sale agreements. Moreover, the supreme court properly invoked the traditional elements of contract reformation from prior Minnesota cases. Notwithstanding this express rejection of a bright-line focus on form in the context of the reformation of a stock sale agreement, however, the supreme court proceeded to apply these traditional elements of reformation by simply reverting back to a bright-line focus on form. The court accomplished this complete contradiction by applying the elements of reformation from the perspective of a corporation’s separate and distinct legal status. The court did this in such a manner as to ensure that, as a matter of law, virtually no stock sale agreements can be reformed for mutual mistake.

Strangely, nowhere in SCI does the supreme court comment on this rather obvious reversion to a bright-line focus on corporate form and the striking similarity of the rules it fashioned in SCI with the bright-line and form-focused rule from Costello. The dissent in SCI at the Minnesota Court of Appeals was quite prescient to remark that “if form is always put over substance, any remedy available for mutual mistake would be placed out of . . . reach,” because of the contradictory reasoning of the supreme court and the court’s reversion to a bright-line focus on corporate form.

The analysis that follows is divided into four parts, each of which illustrates in greater detail the supreme court’s confused and contradictory reasoning in SCI. First, the analysis evaluates how prior Minnesota case law illustrates the Minnesota Supreme Court’s fractured and confusing approach to looking through the corporate form where mutual mistake taints a stock sale agreement. Second, the analysis scrutinizes the supreme court’s focus on the corporate form as the subject matter of a stock sale agreement to bolster its reasoning in SCI under the second

103. SCI Minn. Funeral Servs., 795 N.W.2d at 865 (citing Costello v. Sykes, 143 Minn. 109, 111, 172 N.W. 907, 908 (1919)).
104. SCI Minn. Funeral Servs., 779 N.W.2d at 878 (Worke, J., dissenting); see also Garrey v. Nelson, 185 Minn. 487, 489, 242 N.W. 12, 13 (1932) (“In equity the court adapts its relief to exigencies of the case in hand, and in so doing form always gives way to substance.”).
105. See infra Part IV.A.
This section of the analysis compares and contrasts the supreme court’s approach in *SCI* with another area where Minnesota courts routinely look beyond the corporate form when determining whether to exercise their equitable powers: piercing the corporate veil. Third, the analysis dissects the supreme court’s reliance in *SCI* on bright-line and form-focused principles of corporate and agency law to constructively impute to a corporate stock seller knowledge that guarantees a unilateral mistake under the third traditional element for reformation. This section of the analysis compares and contrasts the supreme court’s approach in *SCI* with the more nuanced approach of prior Minnesota case law to constructive knowledge where the relief sought is equitable. Finally, the analysis argues that *SCI* was probably a result-oriented decision.

A. Minnesota’s Fractured and Confusing History of Looking Through the Corporate Form for Mistake

Four years before its holding in *Costello*, the Minnesota Supreme Court decided *Drake v. Fairmont Drain Tile & Brick Co.*, another case involving a stock sale agreement. In *Drake*, the plaintiff contracted to buy shares of stock in a corporation involved in the manufacture of clay drain tiles. The plaintiff was induced to purchase the stock by the defendant seller’s representations about a clay deposit on land owned by the corporation. When the parties entered into the stock sale agreement, they both believed that the clay deposit was of a quality high enough to be used in the manufacture of drain tiles. Several months after the plaintiff paid for the stock, both parties discovered that the clay deposit was not of the quality required for drain tiles. The plaintiff sued for rescission of the stock sale agreement. The supreme court rescinded the agreement, concluding that both parties, innocent of the identical belief regarding the quality of the clay deposit, “were mutually mistaken upon the very same essentials.
of the contract.” The supreme court’s view of mistake in Drake is consistent with section 151 of the Restatement (Second) of Contracts which states that “mistake is a belief that is not in accord with the facts.”

In Drake, the supreme court rescinded the stock sale agreement due to the parties’ mutual mistake about the assets of the corporation whose stock was the subject matter of the agreement. Four years later in Costello, however, the supreme court abruptly refused to look for the parties’ actual agreement because the court thought it to be beyond the “identity or existence” of the corporate stock being sold. The supreme court found in both Drake and Costello that the parties to the stock sale agreements were mutually mistaken about corporate assets. Nevertheless, the supreme court reasoned quite differently between the two cases, reaching opposite results. Quite remarkably, Costello neither distinguished nor specifically overruled Drake. Costello, in fact, never even mentioned Drake. The question arises, therefore, whether these cases may be reconciled, or whether Costello, having been decided later, implicitly overruled Drake.

In both Drake and Costello, the parties negotiated for corporate assets about which they were mutually mistaken. In both cases the buyer, rather than the seller, was the party seeking equitable relief. No material differences are evident between the two cases. Whether or not Drake and Costello can be reconciled, the supreme court explained in SCI that stare decisis required it to follow the reasoning in Costello for the rescission of stock sale agreements.

115. Id. at 150–51, 151 N.W. at 916.
118. Id. at 111, 172 N.W. at 908 (“The parties to the sale were mutually mistaken as to the assets of the bank, the actual value and the book value of its stock, and the amount of its surplus and undivided profits.”); Drake, 129 Minn. at 150, 151 N.W. at 917 (“Both parties acted upon a supposed state of facts which did not exist. They were mutually mistaken upon the very same essentials of the contract. The mind of neither met upon an actual existing condition or state of facts.”).
119. We are told that the parties in Drake spoke specifically about the quality of the corporate asset about which they were later found to be mutually mistaken. Drake, 129 Minn. at 146, 151 N.W. at 915. In fact, the buyer and the seller probably negotiated about it. Moreover, we are not told that the parties in Costello ever spoke specifically about the quality of the assets in the corporation, with which the corporation’s employees had secretly absconded. Presumably they did, however, because the court found that the buyer bought ten shares for $136 per share because the books and records of the corporation showed that each share of stock was worth $136. Costello, 143 Minn. at 110, 172 N.W. at 908.
Accordingly, it should be safe to assume that, after SCI, the rule from Drake regarding rescission has now been implicitly overruled. The bright-line and form-focused rule from Costello applies to the rescission of stock sale agreements. That said, however, why doesn’t the concept survive from Drake that a court should look beyond the mere identity or existence of a corporation’s stock and into the essence of the parties’ transaction where the relief sought is not rescission but reformation? In fact, this concept clearly should survive in light of the following statement made by the supreme court in SCI that bright-line and form-focused reasoning should not be used when a Minnesota court weighs whether or not to reform a written contractual agreement:

> When the relief seeks to void the entire contract, the additional analysis from Costello, which focuses on the form or subject matter of the transaction that the [party] seeks to undo (i.e., a stock sale), applies. But we have never used that additional analysis in the reformation context, where the relief does not seek to unwind the transaction but simply to modify it to reflect the parties’ actual intention. We likewise decline to do so here. 120

Initially, the supreme court charted the proper course in SCI by invoking the traditional elements of reformation espoused by prior Minnesota case law. Shortly after invoking this precedent, however, the supreme court’s reasoning careened back toward that which it had just expressly rejected—Costello. The court became hopelessly and unfortunately ensnared in a bright-line focus on formal principles that view a corporation as a formally separate and distinct entity.

After assuming that the first traditional element for reformation had been met—that the parties had an actual agreement—the supreme court proceeded to reason about both the second and third elements traditionally required for reformation. It was here that the supreme court was apprehended by these principles of corporate and agency law.

120. SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp., 795 N.W.2d 855, 865 (Minn. 2011) (emphasis added) (citation omitted).
B. The Second Element for Reformation: Focus on Corporate Form

1. The Minnesota Supreme Court’s Rejection and Resurrection of Costello’s Reasoning

Under Minnesota law, the second traditional element that a party must prove when seeking to reform a written contractual agreement is that the written agreement fails to express the objectively manifested intentions of the parties. In SCI, the Minnesota Supreme Court concluded that the stock sale agreement reflected the true intentions of the parties “[b]ecause SCI had the right to exclude the vacant lots under the plain terms of the stock sale agreement, as a matter of law . . . .” Notably, the court buttresses its conclusion that the stock sale agreement reflected the true intentions of the parties with the phrase “as a matter of law.” This phrase is, presumably, a direct reference to the court’s true reasoning—its application of Minnesota corporate law, which immediately precedes this conclusion.

In the several sentences immediately preceding its conclusion that the stock sale agreement in SCI reflected the true intentions of the parties, the supreme court expounded upon the effect of Minnesota corporate law on the transfer of assets and liabilities in a stock sale. In particular, the court pointed out that the stock sale agreement reflected the true intentions of the parties because “under Minnesota law, when a business sells and transfers all of its stock, it is selling all of its assets and liabilities unless the business has expressed otherwise.” This reasoning merely refocused the court on the form or subject matter of the agreement—a stock sale. Moreover, this reasoning led to the court’s conclusion that the second traditional element for reformation was not met. In contrast to this reasoning, and only five brief paragraphs earlier in the SCI decision, the supreme court stated unequivocally that “the additional analysis from Costello . . . focuses on the form or subject matter of the transaction that the [party] seeks to undo (i.e., a stock sale). But we have never used that additional analysis in the reformation context . . . .” Yet, like a phoenix from the ashes, the supreme court uses principles of Minnesota corporate law to resurrect the

122. SCI Minn. Funeral Servs., 795 N.W.2d at 866.
123. Id.
124. Id. (emphasis added).
125. Id. at 865 (emphasis added) (citation omitted).

http://open.mitchellhamline.edu/wmlr/vol38/iss1/3
essential bright-line and form-focused reasoning from *Costello* in the context of reformation.

This reversion to a bright-line focus on form is further revealed by the supreme court’s characterization of the district court’s analysis regarding rescission, affirmed by both the court of appeals and the supreme court: “The [district] court, relying on *Costello v. Sykes* . . . held that appellants were not entitled to rescission based on mutual mistake because a stock sale transfers all assets and liabilities unless specifically excluded.” 126

This language, used by the supreme court to explain how the district court applied *Costello* in the rescission context, is nearly indistinguishable from the language used by the supreme court to buttress its conclusion that the second traditional element for reformation was not met. 127

Simply stated, in *SCI*, the supreme court used the identical reasoning to prevent relief through reformation that *Costello* used to prevent relief through rescission—namely, that under Minnesota law, a stock sale transfers all assets and liabilities not specifically excluded by the parties’ agreement. This reasoning directly contradicts the supreme court’s express disavowal of *Costello* in the reformation context. As a result, after *SCI*, the mode of analysis for equitable relief in the context of a stock sale agreement is essentially the same in Minnesota regardless of whether the relief sought is rescission or reformation. If this is the state of affairs that the supreme court was aiming to achieve through *SCI*, the law in Minnesota would have been made much more simple if the supreme court had merely affirmed the court of appeals’ extension of *Costello* to reformation. Extending *Costello* to reformation would have yielded the same result as that from *SCI* because both modes of analysis preclude relief for the same reason: Minnesota courts will not look through the corporate form when determining whether to exercise their equitable powers of reformation, absent fraud or inequitable conduct. The supreme court’s holding in *SCI* is, therefore, rooted directly within that which it had also ostensibly rejected: bright-line and form-focused principles of corporate law. 128

126. Id. at 859 (emphasis added).

127. See id. at 866 (“[U]nder Minnesota law, when a business sells and transfers all of its stock, it is selling all of its assets and liabilities unless the business has expressed otherwise.”) (emphasis added).

128. Id. at 865 (“When the relief seeks to void the entire contract, the additional analysis from *Costello*, which focuses on the form or subject matter of the transaction that the [party] seeks to undue (i.e., a stock sale), applies.”).
The corporate form is not, however, impermeable to equity’s purview. Courts in Minnesota have long looked through the corporate form when determining whether to exercise their equitable powers. Specifically, Minnesota courts are regularly called upon to look through the corporate form and to the facts and circumstances within the corporation in order to determine whether to use their equitable powers to impose liability on shareholders for corporate obligations. This judicial practice is referred to as determining whether to “pierce the corporate veil.”

Analogizing to this judicial practice is useful to question the lengths to which the supreme court goes in SCI to keep from looking through the corporate form where the relief sought was equitable.

2. Looking Through the Corporate Form To Determine Whether To Exercise Equitable Powers: Piercing the Corporate Veil

A mainstay principle of corporate law is that the owners of a corporation, generally called “shareholders,” are not liable for the debts or obligations of the corporation. A corollary to this principle is that a corporation is an entity formally separate and distinct from its shareholders. These two concepts are, in fact, two sides of a single coin: the policy of limited shareholder liability is a fundamental reason why a corporation is considered to be an entity formally separate and distinct from its shareholders.

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129. See, e.g., Prudential Ins. Co. of Am. v. A. Enkema Holding Co., 196 Minn. 154, 157–58, 264 N.W. 576, 578 (1936) (indicating that a court will disregard the corporation’s separate fictional legal existence where continuing regard of the corporate form would advance fraud or inequity).

130. See Hoyt Props., Inc. v. Prod. Res. Grp., LLC, 736 N.W.2d 313, 318 (Minn. 2007) (“A court may pierce the corporate veil to hold a shareholder liable for the debts of the corporation . . . .”).

131. 4 WILLIAM MEADE FLETCHER ET AL., FLETCHER CYCLOPEDIA OF THE LAW OF CORPORATIONS § 1556 (perm. ed., rev. vol. 2010) (“Today, corporation statutes in all jurisdictions provide that shareholders are not liable to the corporation or its creditors except to the extent of any unpaid consideration for their shares, unless the shareholder becomes personally liable by reason of the shareholder’s acts or conduct.”).

132. Id. § 25.

133. See 114 AM. JUR. PROOF OF FACTS 3D Establishing Elements for Disregarding Corporate Entity and Piercing Entity’s Veil § 403 (2011) (“A fundamental principle of Anglo-American law is that a [corporation] . . . is separate and distinct from its owners . . . . Consequently, the liability of an [owner] for the obligations of an entity is limited to [the owner’s] interest in the entity. This concept of limited liability has been called the most attractive feature of [the] corporation.”) (emphasis added); John H. Matheson, The Limits of Business Limited Liability: Entity Veil Piercing and Successor Liability Doctrines, 31 WM. MITCHELL L. REV. 411, 413 (2004) (“Businesses and their owners regularly seek to limit the scope of their
effort, therefore, by a court applying equitable principles to impose corporate liabilities on the shareholders of the corporation is in derogation of the fundamental principle of corporate law that a corporation is separate and distinct from its shareholders.

We find, nonetheless, that courts do look through the separate and distinct status of a corporation when called upon to determine whether to exercise their equitable powers and impose corporate liabilities on shareholders. When a court does exercise its equitable powers to impose corporate liabilities on shareholders, the court is said to be “piercing the corporate veil.” In order to actually pierce the veil and impose liability, however, particular circumstances must exist: either fraud must be present or the corporation must be merely an alter ego of its shareholders. Minnesota courts will look through the corporate form to determine whether to pierce the corporate veil regardless of whether fraud is involved. Notably, fraud is not a necessary element to pierce the corporate veil where the shareholders have used the corporation as their alter ego.

In the absence of fraud, however, Minnesota courts require that “some element of injustice or fundamental unfairness” would result if the corporate veil were not pierced. It is true that in circumstances where Minnesota courts will pierce the corporate veil in the absence of fraud, the corporate shareholders have generally tried to have their cake and eat it too. Nevertheless, this practice illustrates that Minnesota

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134. See Roepe v. W. Nat'l Mut. Ins. Co., 302 N.W.2d 350, 352 (Minn. 1981) (explaining that the concept of piercing the corporate veil involves ignoring the corporation as a “distinct entity” and is a concept “equitable in nature”).

135. Piercing the corporate veil is a judicially created exception to a corporation’s separate and distinct existence, created through the court’s equity powers. FRANKLIN A. GEVURTZ, CORPORATION LAW § 1.5.1, at 69 (2d ed. 2010).


137. Id.

138. Id. (“[W]e have never explicitly held that fraud is a necessary element.”).

139. Id. (“[I]n the absence of fraud[,] there [must] be an element of injustice or fundamental unfairness.”).

140. See, e.g., Mfrs. Bldg., Inc. v. Heller, 306 Minn. 180, 183, 235 N.W.2d 825, 827 (1975) (holding that piercing the corporate veil was appropriate in the absence of fraud where the corporation was used by the shareholders as merely a
courts regularly and unhesitatingly look through the corporate form in order to determine whether to exercise their equitable powers.

3. Not Looking Through the Corporate Form To Determine Whether To Exercise Equitable Powers: SCI’s Approach To Reformation

If Minnesota courts will, even in the absence of fraud, look through a corporation’s formally separate and distinct status when determining whether they will exercise their equitable powers to impose corporate liabilities on shareholders, why did the supreme court in SCI refuse to look through the corporate form when determining whether to exercise its equitable powers of reformation? Why, in light of the fact that the parties in SCI stipulated to agreed-upon facts that exuded injustice and fundamental unfairness, did the court in SCI summarily take refuge in bright-line legal principles rooted in a corporation’s formally separate and distinct status?

Unfortunately, the supreme court failed in SCI to provide any deeper reasoning with which to answer these questions. It failed to offer any rationale for its patent application of these bright-line and form-focused principles. An unstated reason may be provided by the supreme court in Costello. There, the supreme court stated that it would not disregard a corporation’s formally separate status when determining whether to exercise its equitable powers of rescission because the court was not “inclined to open up a new field for litigation.” 141 In light of the preceding discussion of piercing the corporate veil, this rationale from Costello has merit because the issue of piercing the corporate veil is “one of the most frequently litigated in all of corporate law.” 142 It is an area “all too often characterized by ambiguity, unpredictability, and... randomness,” 143 which stems from the unpredictable application and inconsistent articulation of the rules applicable to the practice of looking through the corporate form to determine whether to pierce the corporate veil. If the supreme court feared opening up

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a new field for litigation in SCI by looking through the corporate form in order to determine whether to exercise its equitable powers of reformation, the court’s fear would be quite justified. The supreme court never offers this as a rationale in SCI, however. Moreover, the fact that the supreme court goes out of its way to expressly reject the bright-line and form-focused reasoning from Costello, where the relief sought is reformation, strongly suggests that this is not the rationale underlying the court’s holding in SCI. If the supreme court had truly feared creating a new breeding ground for litigation through its decision in SCI, the court would have more effectively prevented such a possibility by simply affirming the court of appeals’ extension of the rule from Costello to the reformation of stock sale agreements.144

The confused approach of SCI renders the supreme court’s express rejection of Costello in the reformation context effectively superfluous. As such, SCI’s approach invites future litigation. This is evident by comparing the mode of analysis used in Costello with that used in SCI. Costello’s mode of analysis is simple and straightforward. It occurs all in one step: no equitable relief is allowed for a stock sale agreement, absent fraud or inequitable conduct, because the subject matter being sold is stock.145 SCI’s mode of analysis, on the other hand, is vague and internally contradictory. It occurs in at least two steps: first, the traditional elements of reformation are applied and then formal principles of corporate and agency law are applied.146 This approach provides a breeding ground for litigation. Future mistaken parties to stock sale agreements will doubtlessly litigate in order to show that their facts are somehow different from those of SCI. Perhaps the unintended transfer of liabilities, rather than assets, will be at issue in future cases. In addition, buyers, rather than sellers, may be the parties seeking relief. Moreover, mistaken parties to an unincorporated business sale agreement, such as an agreement to sell a limited liability company, may litigate whether SCI’s bright-line and form-focused reasoning extends to unincorporated business entities. Finally, future mistaken parties to stock sale agreements will be forced to litigate in order to clarify the true import of the vague and internally contradictory reasoning in SCI.

145. See Costello, 143 Minn. at 114, 172 N.W. at 909.
146. SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp., 795 N.W.2d 855, 865–67 (Minn. 2011).
C. The Third Element for Reformation: When Constructive Knowledge Leads To Unilateral Mistake

1. Minnesota’s Nuanced Approach To Constructive Knowledge where Equitable Relief Is Sought

Under Minnesota case law, the third element that a party must prove when seeking to reform a written contractual agreement is that the written agreement’s failure to express the true intentions of the parties is the result of a mutual mistake—a mistake of both parties to the agreement. In SCI, the Minnesota Supreme Court concluded that any mistake made regarding the two properties was unilateral, rather than mutual, because “it was SCI that failed to remove the lots from the transaction.” The court explained that it was again using Minnesota corporate law to anchor its reasoning, concluding that “under general corporate law principles, a corporation is charged with constructive knowledge . . . of all material facts” of which its agents have knowledge. The court also rationalized that because some SCI employees had, at some point in the past, known about the two properties, Minnesota law thereby imputed those employees’ knowledge to “the entire company.” It is true that the law of agency imputes knowledge from an agent, such as an employee, to the principal, such as the employer. Moreover, a corporate agent’s knowledge can be imputed to the corporation collectively with the knowledge of other corporate agents. The supreme court’s enthusiasm in SCI for these formal principles of corporate and agency law is misplaced, however, in light of the court’s complete failure to grapple with the more nuanced approach that Minnesota case law has taken to constructive knowledge where the relief sought is equitable.

147. E.g., Nichols v. Shelard Nat’l Bank, 294 N.W.2d 730, 734 (Minn. 1980).
148. SCI Minn. Funeral Servs., 795 N.W.2d at 866.
149. Id. at 866 (quoting Travelers Indem. Co. v. Bloomington Steel & Supply Co., 718 N.W.2d 888, 893–96 (Minn. 2006)) (internal quotations omitted).
150. Id.
151. A major consequence of a corporation’s separate and distinct status is that a corporation can act only through its agents, such as employees or directors of the corporation. See Save Our Creeks v. City of Brooklyn Park, 699 N.W.2d 307, 309 (Minn. 2005) (“[A] corporation is an artificial entity which can only act through agents.” (quoting Nicollet Restoration, Inc. v. Turnham, 486 N.W.2d 753, 754 (Minn. 1992))) (emphasis added). As a result, the law of agency applies to govern the relations between and among a corporation, its agents, and third parties.
152. RESTATEMENT (THIRD) OF AGENCY § 5.03 cmt. c (2006).
In *Gartner v. Eikill*, the Minnesota Supreme Court explained that “[t]he failure of a party to investigate” will not always result in a unilateral mistake precluding equitable relief. The court in *Gartner* took a nuanced approach to how parties to an agreement bear the risk of their lack of knowledge or their failure to obtain knowledge through adequate investigation. There, the supreme court held that the parties to a commercial real estate transaction were mutually mistaken where they both believed the land being sold was zoned for general commercial use. The purchaser undertook some investigation of the land’s zoning status but somehow failed to discover that it was not zoned as both parties understood it to be zoned. In *Gartner*, the supreme court expressly rejected the defendant-respondent’s invitation to constructively impute knowledge of the land’s true zoning status to the plaintiff-appellant. Moreover, the court based its reasoning on prior Minnesota case law as well as on the California Supreme Court’s reasoning in *Hannah v. Steinman*, a case in which all parties to a lease were unaware of a local leasehold ordinance. In *Hannah*, the parties could have discovered the ordinance if they had inquired with the city. Similarly, the court in *Gartner* reasoned that the parties’ lack of knowledge was a mutual mistake, noting that “[w]e cannot believe that the equitable rules relative to mistake should be so narrowly construed as to require us to hold that this mistake did not go to the very essence of the contract between these parties.”

2. SCI’s Disregard of Minnesota’s Nuanced Approach To Constructive Knowledge

In *SCI*, the facts are devoid of any indication that SCI undertook a search for all properties titled to Crystal Lake prior to

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153. 319 N.W.2d 397 (Minn. 1982).
154. Id. at 399 (“The failure of a party to investigate, however, will not always preclude rescission.” (citing *RESTATEMENT OF CONTRACTS § 508 (1932)*)).
155. Id. at 400.
156. Id. at 398.
157. Id. at 399–400.
158. Id. at 399 (“In *Lindquist v. Gibbs*, 122 Minn. 205, 142 N.W. 156 (1913), and *Thwing v. Hall & Ducey Lumber Co.*, 40 Minn. 184, 41 N.W. 815 (1889), for example, this court ordered rescission of contracts for the sale of land under circumstances in which the buyer could have discovered the mistake.”).
159. 112 P. 1094 (Cal. 1911).
160. Id. at 1095.
the stock sale. SCI may have failed to undertake any such investigation, whereas in Gartner the parties did undertake some investigation—just not enough to discover the mistake. The supreme court’s holding in SCI fails to make this distinction between some diligence and no diligence, however. Instead, the court simply imputes knowledge *per se* to SCI, stating that because “Minnesota law imputes . . . knowledge [of the two properties] to the entire company, SCI could have removed the vacant lots from the sale. . . . [T]herefore, any mistake was a unilateral mistake.”

Relying on the conclusion that any mistake regarding the two properties was made unilaterally by SCI because SCI bore the risk of the mistake, the supreme court barred SCI from obtaining equitable relief through reformation because the third traditional element for reformation could not be met.

Under the third traditional element, a party seeking reformation cannot have made a unilateral mistake unless the other party knew about the mistake or acted fraudulently. Accordingly, the supreme court’s decision to ascribe knowledge of the properties to SCI, thereby saddling SCI with the risk of removing the properties before sale, is a departure from, as well as a complete failure to grapple with, Minnesota’s much more nuanced approach to constructive knowledge where the relief sought is equitable, as illustrated by Gartner. Simply stated, this failure further illustrates how the supreme court in SCI effectively continued to adhere to the bright-line focus on form from Costello.

Where a party to a stock sale agreement is seeking to reform that agreement, the Minnesota Supreme Court’s holding in SCI will charge that party with knowledge—“as a matter of law”—of all assets and liabilities of which any agent of that party has or had knowledge while working in the scope of his or her agency duties. Therefore, sellers who have negotiated with a buyer for an exact mix of assets and liabilities to be sold through a stock sale agreement where any agent of the seller is or was aware of assets titled to the corporation to be sold that are not part of the sale agreement will almost never be able to obtain relief through reformation if that agreement is tainted with a mistake of both

162. *SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 866 (Minn. 2011) (citation omitted).
163. *Id.* (“Any mistake here regarding the vacant lots was SCI’s mistake alone because it was SCI that failed to remove the lots from the transaction.”).
165. *SCI Minn. Funeral Servs.*, 795 N.W.2d at 866.
parties as to the composition of assets and liabilities held by the corporation whose stock is being sold. Instead, the seller will always be held to have made a unilateral mistake, precluding relief.

D. The Effect of the SCI Decision: A Result-Oriented Decision?

Perhaps the supreme court’s decision in SCI was result-oriented. After all, the court seemed to vacillate about what the “mistake” was in the case. When discussing rescission, the

166. Id.

167. On the other hand, the supreme court’s decision in SCI could be viewed, through the bent of certain legal scholarship, as policy-oriented. Consider Duncan Kennedy’s discussion of the correlation between form and substance and rules and standards in the law. In his article, Form and Substance in Private Law Adjudication, Kennedy describes a school of legal thought justifying judicial decisions based on form rather than substance. Duncan Kennedy, Forms and Substance in Private Law Adjudication, 89 HARV. L. REV. 1685 (1976). Kennedy states that such decisions may result in “the imposition of liability on the actor who is not morally blameworthy.” Id. at 1743. “The basic notion behind these arguments” elevating formal rules over substance, writes Kennedy, is that “vigilance in one’s interests [is one of a number of] economic goods” whose production should be stimulated. Id.

The best way to stimulate their production is to sanction those who fail to acquire them, by exposing them to breach of altruistic duty by those who are more provident. The rule advocate may affirm that “this hurts me more than it does you” as she administers the sanction. But the refusal to tolerate present inequity would make everyone worse off in the long run. Id. As applied to the result in SCI, the argument for the application of this viewpoint would be that SCI should have undertaken whatever vigilance was necessary to ensure that it knew of every asset owned by Crystal Lake before the stock sale and that SCI will be bound to reap whatever may befall its failure to do so. It seems likely that, if applied without restraint, this viewpoint would abrogate most, if not all, equitable remedies. Roscoe Pound advocated for a somewhat restrained application of this viewpoint, stating that “legal conceptions which are applied mechanically are more adapted to property and to business transactions; standards where application proceeds upon intuition are more adapted to human conduct and to the conduct of enterprises.” Roscoe Pound, The Theory of Judicial Decision, 36 HARV. L. REV. 940, 951 (1923). Unfortunately, aside from a vague appeal to common sense, Pound fails to illustrate why his stated distinction is normative. Kennedy, for his part, suggests that an attempt might be made to balance form and substance in the law by researching “at the level of social reality, the actual influence of [decisions based on form and decisions based on substance] on economic, social, and political life.” Duncan Kennedy, supra at 1738. Kennedy’s suggestion is, however, utterly indistinct from an articulation of the basic reasons for and policies behind the historical development of equitable remedies. As such, this legal scholarship collapses into traditional notions of equity and the law, such as that so famously described by Justice Oliver Wendell Holmes, Jr.: “The distinctions of the law are founded on experience, not on logic. It therefore does not make the dealings of men dependent on a mathematical accuracy.” OLIVER WENDELL HOLMES, THE COMMON LAW 244 (Mark DeWolfe Howe ed., The Belknap Press of Harvard Univ. Press 1963) (1881).
mistake related to the value of the Crystal Lake stock. When discussing reformation, however, the mistake morphed and became SCI’s failure to remove the two properties from Crystal Lake before the stock sale. The rationale behind this equivocation is never explained. In all likelihood, the supreme court was concerned that the mistake in SCI was one of value. For reasons of efficiency and utility, equitable remedies cannot reach mutual mistakes of value. Lord Henry Home Kames explained that “[t]o indulge debate about the true value of every commercial subject, would destroy commerce; and, for that reason, equity, which has nothing in view but the interest of a single person, must yield to utility, which regards the whole society.” Yet, it seems plausible that the mistake in SCI is more realistically characterized not as one of value but as the failure of the written agreement to reflect the parties’ undisputed bargain for the cemeteries and funeral home businesses, not the vacant lots. Viewed this way, the mistake would qualify for equitable relief through reformation, if the supreme court had truly put aside Costello’s bright-line focus on form in the reformation context.

Indeed, in SCI, the supreme court itself admits that reformation should be easier to achieve than rescission because “reformation . . . does not seek to unwind the transaction but simply to modify it to reflect the parties’ actual intention.” Consequently, the court should have followed its own advice and fashioned a rule that allows Minnesota courts to look through the corporate form when determining whether to reform stock sales agreements because “[a] legal conclusion which is sound for one purpose may be unrealistic . . . when applied to a different though related purpose.” In this too, the supreme court strayed from its

168. SCI Minn. Funeral Servs., 795 N.W.2d at 862.
169. Id. at 866.
170. Pound, supra note 167, at 941 (“Having to decide so many cases and to write so many opinions, either consideration of the merits of the actual controversy must yield to the need of detailed formulation of a precedent that will not embarrass future decision, or careful formulation must give way to the demand for study of the merits of the case in hand. . . . [T]oo often both these things happen and the case itself is not as well considered as the court could wish, while much is said in deciding it which must be re-examined as well as may be when cited to the court in other controversies.”). But see LEWIS CARROLL, ALICE IN WONDERLAND 72 (North-South Books 1999) (1866) (“Take care of the sense, and the sounds will take care of themselves.”).
171. KAMES, supra note 18, at 176.
172. SCI Minn. Funeral Servs., 795 N.W.2d at 865.
own declaration that “[i]n equity the court adapts its relief to exigencies of the case in hand, and in so doing form always gives way to substance.”174

V. CONCLUSION

Since Costello, Minnesota has refused to look beyond the form—the corporate form—of stock sale agreements to rescind such agreements tainted with mutual mistake. SCI provided the Minnesota Supreme Court with the opportunity to follow its own mandate that “[e]quity’s vision is not circumscribed by formal instruments, but extends through matters of form to the heart of the transaction.”175 Yet, despite the supreme court’s express limitation of Costello’s focus on form solely to actions for rescission, the supreme court failed in SCI to leave open any avenue of meaningful equitable relief for mutual mistake through reformation. Instead, the supreme court refused to look for mutual mistake beyond the corporate form. The supreme court supported this refusal with principles of corporate law—the same principles of corporate law that support Costello. Moreover, the supreme court charged the corporate form, as a matter of law, with knowledge sufficient to guarantee a unilateral mistake that will nearly always preclude the reformation of stock sale agreements.

The supreme court’s focus on the form of a stock sale agreement where the parties are seeking equitable relief is at odds with the court’s express rejection of Costello in the reformation context, as well as with longstanding judicial principles of equity. SCI effectively forecloses any meaningful equitable relief for stock sale agreements tainted with mutual mistake, leaving purchasers and sellers of stock helpless.

175. Holien v. Sllec, 120 Minn. 261, 267, 139 N.W. 493, 495 (1913).