

Piercing the Corporate Veil is Difficult, but Not Impossible
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I. Introduction

One of the fundamental benefits of conducting business in the corporate form is that you can insulate yourself from personal liability for corporate obligations. For example, if you want to purchase an apartment building, instead of purchasing it individually, the wiser course is for you to form a corporation to make the acquisition. Later, insurance issues aside, if a tenant is seriously injured, the tenant can only recover from the corporation and not from you individually. If the injured tenant wins a judgment for \$3,000,000, and the corporation only has assets of \$2,000,000, the injured party *cannot* look to your personal assets to satisfy the remainder of its judgment.

However, a different result may occur for business owners abuse the corporate form. Let's assume that owner ("O") is the sole shareholder of a corporation ("A"). A leases office space from Corporation B ("B") and fails to pay rent. Once it becomes apparent that B plans to sue A for unpaid rent, unscrupulous O shifts all of A's assets to a different corporate entity he controls or to his personal accounts to attempt to make A judgment-proof. Although B has a valid breach of contract claim against A, A is an "empty vessel." Even if B sues A, A often will choose not to defend the action, deciding that there is no reason to waste money on legal fees defending the suit. This strategy works as long as O (who presumably has plenty of assets to satisfy the potential judgment) cannot be held personally liable for the obligations of A, his now defunct corporation. However, depending on the particular facts, O may not be invincible with respect to B's claim.

B can potentially hold O liable for A's obligations by "piercing the corporate veil." To be able to disregard the corporate form and hold a shareholder of a corporation liable for its

obligations, a plaintiff must satisfy a heavy but not insurmountable burden. If O is using the corporate form to perpetrate a wrong upon B (i.e. by deliberately not paying for rent or services), multiple New York Appellate Division cases have held that O is personally liable for A's debts.

II. The Standard for Piercing the Corporate Veil

“Piercing the corporate veil requires a showing that (1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and (2) that such domination was used to commit a fraud *or wrong* against the plaintiff which resulted in the plaintiff's injury.” Hyland Meat Co., Inc. v. Tsagarakis, 202 A.D.2d 552, 552, 609 N.Y.S.2d 625 (2d Dep't 1994) (emphasis added). “[T]he party seeking to pierce the corporate veil must further establish that the owners through their domination, abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against that party such that a court in equity will intervene.” Id. at 552.

III. Applying the Standard

In our example, B must show that O completely dominated A with respect to the transaction at issue. To hold O liable, B must demonstrate that A is simply a “dummy corporation” created to conduct business in the owner's personal capacity. If B establishes that O was simply using A as a conduit for his personal business and not respecting the corporate form, B can show that O has dominated A. To establish domination, B must prove some combination of the following criteria:

1. O possessed all of the decision-making power for A.
2. A has no real employees apart from O except for clerical staff.
3. In B's entire course of dealings with A, he negotiated only with O.

B can then argue that O completely dominated A and should be held accountable for its debts. B must show that O used this domination to “perpetrate a wrong or injustice against” against B “such that a court in equity will intervene.” Weinstein v. Willow Lake Corp., 262 A.D.2d 634, 635, 692 N.Y.S.2d 667 (2d Dep’t 1999); see also Island Seafood Co., Inc. v. Golub Corp., 303 A.D.3d 892, 893, 759 N.Y.S.2d 768 (3d Dep’t 2003) (Allowing plaintiff to pierce the corporate veil “when a corporation has been so dominated by an individual or another corporation and its separate entity so ignored that it primarily transacts the [other’s] business.”).

IV. Defeating Common Arguments Asserted by Individual Defendants Who Contend They are Not Liable for the Debts of their Corporations

Let’s assume that Corporation B (“B”) has a contract to provide services to Corporation A (“A”) who is solely owned by Owner (“O”). B provides the services, but A only makes partial payments. B’s contract is with A and the partial payments A has made were all by checks from A’s corporate accounts. However, throughout the relationship, since B only deals with O, B suspects that O is the sole owner of A and makes all of its business decisions. A appears to have no employees apart from O and his secretary. Thus, B sues A and O.

O can be expected to argue that B can not pierce the corporate veil and hold O individually responsible because 1) B’s invoices were rendered only to the Corporate Defendant, A and not to O individually; 2) the invoices were never paid from O’s personal bank accounts; and 3) A and B (not O) are the only parties to the contract. However, these facts, in and of themselves, *do not* entitle an individual defendant to an order dismissing the plaintiff’s claims.

To illustrate, in Weinstein v. Willow Lake Corp., the plaintiff leased property to Willow Lake, which failed to pay rent. 262 A.D.2d at 635. The plaintiff sued Willow Lake as well as Parkway, the entity that controlled Willow Lake. Id. Parkway moved to dismiss for failure to

state a cause of action because it was not a party to the lease. Id. The plaintiff opposed the motion contending that Parkway controlled Willow Lake as a “shell or dummy corporation ... for its own purposes.” Id. The Court *denied* Parkway’s motion to dismiss, holding that the plaintiff alleged that Parkway “held itself out as creating, controlling and being responsible for the leased premises.” Id. The Court also ruled that Willow Lake’s “involvement” in the transaction was “limited to the signing of the lease.” Id.

Similarly, in our hypothetical, B has alleged that O: 1) used A as a shell or dummy corporation to conduct business in his personal capacity; 2) operated as the exclusive owner of A and was entirely responsible for making all corporate decisions; 3) hired no employees for A, except an occasional secretary; and 4) failed to respect certain corporate formalities. Many New York Courts will embrace Weinstein and hold that O should not be exculpated from the wrongs it has committed merely because his name does not appear on the contract, invoices, or checks at issue.

V. A Defendant Does Not Have to Commit a Fraudulent Act for a Plaintiff to Pierce a Corporate Veil

Some individual defendants wrongfully assume that a plaintiff cannot pierce a corporate veil by demonstrating mere garden-variety transgressions, (i.e. not paying for rent or services). The standard for piercing the corporate veil *does not* require a showing of fraud; rather all that is required is a showing of the acts of “domination used to commit fraud *or wrong* against the plaintiff.” See Hyland Meat Co., Inc., 202 A.D.2d at 552. (emphasis added). In Anderson St. Rlty. Corp. v. RHMB New Rochelle Leasing Corp., RHMB entered into a lease and then failed to pay rent, i.e. it committed a wrong. 243 A.D.2d 595, 595, 663 N.Y.S.2d 279 (2d Dep’t 1997). The plaintiff sued RHMB and Atlantic, the company that controlled RHMB. Id. The Court

allowed the plaintiff to pierce the corporate veil and hold Atlantic liable even though Atlantic was not a party to the lease because the record demonstrated that Atlantic dominated RHMB with respect to the “wrong now complained of by the plaintiff ... the nonpayment of rent.” Id. at 596. There were no allegations of fraud against Atlantic. The plaintiff merely alleged that Atlantic perpetrated a wrong upon it by directing an entity it controlled not to pay the plaintiff rent. Id. at 595-6.

VI. Conclusion: Investigate the Possibility of Suing both the Corporate and Individual Defendants

If a plaintiff has a legitimate belief that the corporate entity he seeks to sue has been completely dominated by its owner, it is permissible to add the owner as an individually named defendant. Thereafter, if the plaintiff is able to pierce the corporate veil, it has significantly increased its chances of recovering upon any potential judgment. The individual defendant will likely appear in the lawsuit by moving to dismiss the claims against them, and the parties will litigate this issue with the outcome dependent on the particular facts. A potential plaintiff should keep in mind, however, that it should explore the possibility of naming the shareholders of a corporation individually as it can be a great pressure point to help facilitate a settlement of the dispute.