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Corporations – Piercing the Corporate Veil – Stockholder Liability

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The *Restatement of Torts* seems to present the most logical solution to the problem of intervening cause.¹⁸ In essence it states that if it is foreseeable that a thief will steal the owner's automobile, the tortious conduct of the thief will not necessarily absolve the owner of liability to the injured third person. Thus, it is as anomalous to reason that the intervening criminal or tortious conduct of a thief is a superseding force absolving the owner of liability as it is to impose liability as a matter of law. Obviously, there can be no infallible method in the solution to this problem. The only logical alternative in the determination of the owner's liability is to leave this question of causation to the jury.

ALVIN I. MALNIK

CORPORATIONS — PIERCING THE CORPORATE VEIL — STOCKHOLDER LIABILITY

Appellant, who was the principal stockholder of a corporation, permitted the use of her funds for the corporate business. She was joined as a party defendant in supplementary proceedings in aid of execution following judgment against the corporation for defrauding the creditors. *Held*, that knowledge and participation in the fraud was imputed to the appellant; the corporate veil was properly pierced; and the stockholder was personally liable for the debts of the corporation. *Codomo v. Emanuel*, 91 So.2d 653 (FLA. 1956).

The general rule which has been almost universally accepted states that a corporation is a legal entity separate and apart from its stockholders, and will be recognized as such,¹ unless this recognition would tend to

18. RESTATEMENT, TORTS § 449 (1934). If the realizable likelihood that a third person may act in a particular manner is the hazard or one of the hazards which make the actor negligent, such an act whether innocent, negligent, intentionally tortious or criminal does not prevent the actor from being liable for the harm caused thereby.

1. *U.S. v. Milwaukee Refrigerator Transit Co.*, 142 Fed. 247 (E.D. Wis. 1905); *First Nat. Bank of Cadson v. Winchester*, 119 Ala. 168, 24 So. 351 (1898); *Mosher v. Lee*, 32 Ariz. 560, 261 Pac. 35 (1927); *Midwest Air Filters Pac. v. Finn*, 201 Cal. 587, 258 Pac. 382 (1897); *Martin v. D.B. Martin Co.*, 10 Del. Ch. 211, 88 Atl. 612 (1913); *South Florida Citrus Land Co. v. Waldin*, 61 Fla. 766, 55 So. 862 (1911); *Biscayne Realty and Ins. Co. v. Ostend Realty Co.*, 109 Fla. 1, 148 So. 560 (1933); *Donovan v. Purtell*, 216 Ill. 629, 75 N.E. 334 (1905); *Congdon v. Congdon*, 160 Minn. 343, 200 N.W. 76 (1924); *Ehlers v. Bankers Fire Ins. Co.*, 108 Neb. 756, 189 N.W. 159 (1922); *State Trust & Savings Bank v. Hermosa Land and Cattle Co.*, 30 N.M. 566, 240 Pac. 469 (1925); *People v. North River Sugar Refining Co.*, 121 N.Y. 582, 24 N.E. 834 (1890); *Damascas Mfg. Co. v. Union Trust Co.*, 119 Ohio 439, 164 N.E. 530 (1928); *Security Savings & Trust Co. v. Portland Flour Mills Co.*, 124 Ore. 276, 261 Pac. 432 (1927); *Fidelity Trust Co. v. Service Laundry Co.*, 160 Tenn. 57, 22 S.W.2d 6 (1929); *Boston & Texas Corp. v. Guarantee Life Ins. Co.*, 233 S.W. 1022 (Tex Civ. App. 1921).

sanction fraud or promote injustice.² The courts are reluctant to pierce the corporate veil and will do so only in exceptional cases.³ The most common instances are cases of fraud involving the creditors, or where the corporation is formed for an illegal purpose or to commit an illegal act.⁴

This is not a new concept in corporation law. In one of the earliest cases on point, *Booth v. Bunce*,⁵ the court held that the corporate veil would be lifted if incorporation was to defraud or confuse creditors. Hence the courts will look directly to the parties when justice and public policy demand it.⁶

Corporate existence is also brushed aside when it is shown that the corporation is a mere sham or "alter ego" of an individual stockholder.⁷ The majority of courts that have adjudicated this question have confined their holdings to cases where there was such a unity of interest and ownership that the individuality of the corporation and the person had ceased.⁸ Most courts will not pierce the corporate veil on the "alter ego" doctrine alone,⁹ if there is no fraud present, even though incorporation was to evade personal liability.¹⁰

The instant case tends to apply a liberal interpretation to the concept of piercing the corporate veil, in contrast to a strict interpretation applied in an earlier Florida case,¹¹ where the court stated, "it may well be that some of the assets of the corporation were wrongfully diverted by the appellents, however this evidence is too inadequate to pierce the corporate veil, in that the law provides adequate remedies for their recapture."

2. *Ruberroid Co. v. North Texas Concrete Co.*, 193 F.2d 121 (5th Cir. 1951); *Majestic Co. v. Orpheum Circuit*, 21 F.2d 720 (8th Cir. 1927); *Pickwick Co. v. Welch*, 21 F. Supp. 664 (S.D.Cal. 1937); *International Aircraft Co. v. Manufacturer's Trust Co.*, 297 N.Y. 285, 79 N.E.2d 249 (1956).

3. *Distilling Sales Co. v. Vocelle*, 158 Fla. 100, 27 So.2d 728 (1946); *Bartle v. Homeowners Cooperative*, 309 N.Y. 103, 127 N.E.2d 832 (1955).

4. *Ibid.*

5. 33 N.Y. 139 (1865).

6. *Barium Steel Corp. v. Wiley*, 379 Pa. 38, 108 A.2d 336 (1954); See note 2 *supra*; See also 1 FLETCHER, CORPORATIONS § 41 (Perm. Ed. 1931).

7. *Edwards v. United States* 123 F.2d 465 (9th Cir. 1941). *Advertects, Inc. v. Sawyer Industries*, 84 So.2d 21 (Fla. 1955).

8. *Stark v. Coker*, 20 Cal. 2d 839, 129 P.2d 390 (1942); *In re Greenwald's Estate*, 19 Cal. App. 2d 291, 65 P.2d 70 (1937); *Mayer v. Eastwood-Smith & Co.*, 122 Fla. 34, 164 So. 684 (1935); *Wade & Wade v. Central Broadcasting Co.*, 227 Iowa 427, 288 N.W. 441 (1939); *State v. McBride*, 215 Minn. 123, 9 N.W.2d 416 (1943); *Havey v. Hoffmann*, 121 N.J.Eq. 523, 191 Atl. 756 (1937); *Merrell v. Timmons*, 138 Tex. 250, 158 S.W.2d 278 (1941); *Garvin v. Matthews* 193 Wash. 152, 74 P.2d 990 (1938); *Tynes v. Shore*, 117 W.Va. 355, 185 S.E. 845 (1936).

9. WORMSER, THE DISREGARD OF CORPORATE FICTION AND ALLIED CORPORATE PROBLEMS (1927). Professor Wormser contends that, "practically every case of a one man corporation where the veil of corporate entity was brushed aside, the same result would have followed if there had been a thousand stockholders, or ten thousand."

10. *Gledhill v. Fisher*, 272 Mich. 353, 262 N.W. 371 (1935); *P.S. & A. Realities v. Lodge Gate Forest*, 205 Misc. 245, 127 N.Y.S.2d 315 (Sup. Ct. 1954); *Flenkrieg v. Siebrecht*, 238 N.Y. 254, 144 N.E. 519 (1924); *Buckner v. Dillard*, 184 Okla. 586, 89 P.2d 326 (1939); See note 2 *supra*.

11. *Riley v. Fatt*, 47 So.2d 769 (Fla. 1950); *Gross v. Cohen*, 80 So.2d 360 (Fla. 1955).

Generally a stockholder, who is not a director, is not charged with notice of the affairs of the corporation.¹² A stockholder who does not participate in an illegal or tortious act is not to be held accountable.¹³ In the principal case the appellant was charged with knowledge of, and participation in the fraud, in that she was a principal stockholder, and permitted the use of her funds for corporate affairs. The court, in effect, charged that the appellant's status in the corporation, together with the fact that her money was being used by the corporate entity was tantamount to her participation in the fraud. It may be that such a charge lies within the discretion of the courts, but did the evidence in fact show that such a charge was warranted? It is submitted that it did not. In the case of *Corvell v. Phipps*,¹⁴ the court stated that the plaintiff must show by a preponderance of evidence that the corporation's activities were in reality those of the individual stockholder.

The appellant was not a director of the corporation either in name or in reality; it was not shown that she actually participated in the fraud, and the evidence and testimony did not show that she had knowledge of the fraud. The court relied upon her status as principal stockholder, and the fact that her funds were used in the corporation as a basis to disregard the legal entity.¹⁵ It would seem that the Florida courts are no longer *reluctant* to brush aside the corporate veil, but rather they are aggressive in doing so. It is conceded that the corporate fiction should not hinder the courts in the achievement of justice. However, a careful scrutinization of the individual acts of corporate members will more accurately determine the *real actors*.

RALPH P. EZZO

LABOR LAW — UNIONS — LOYALTY OATH

A union officer filed a false non-Communist affidavit with the National Labor Relations Board with full knowledge by the union membership that the affidavit was false. The Board ruled that the union was not in

12. *Nettles v. Childs*, 100 F.2d 952 (4th Cir. 1939); *Mandeville v. Courtright*, 142 Fed. 97 (3rd Cir. 1905); *Commercial Savings Bank v. Kietges*, 206 Iowa 90, 219 N.W. 44 (1928); *Rudd v. Robinson*, 126 N.Y. 113, 26 N.E. 1046 (1891); *Hughes v. Wachter*, 61 N.D. 513, 238 N.W. 776 (1931); *Barson v. Pioneer Savings & Loan Co.*, 163 Ohio St. 424, 121 N.E.2d 76 (1954); *Greenville Gas Co. v. Ries*, 54 Ohio St. 549, 44 N.E. 271 (1896); *Medill v. Collier*, 16 Ohio St. 599 (1866); *Chourmis v. Laing*, 125 W.Va. 275, 23 S.E. 2d 628 (1942).

13. *Linninger v. Botsford*, 32 Cal. App. 386, 163 Pac. 63 (1916); *Atchison, T. & S. F. Ry. v. Cochran*, 43 Kan. 225, 23 Pac. 151 (1890); *Grapico Bottling Co. v. Ennis*, 140 Miss. 502, 106 So. 97 (1925); *Belo v. Fuller*, 84 Tex. 450, 19 S.W. 616 (1892). See note 12 *supra*. In *Advertex, Inc. v. Sawyer Industries*, *supra* note 7 the court held that the veil would not be lifted unless the assets were diverted by the stockholders or appropriated for their personal use.

14. 128 F.2d 702 (5th cir. 1942).

15. The court in the instant case noted the fact that the books of the corporation were poorly kept, however *Riley v. Fatt*, *supra* note 11 held that this was not enough to disregard the legal entity.