Roger Williams University Law Review

Volume 5 | Issue 2 Article 16

Spring 2000

1999 Survey of Rhode Island Law: Cases: Corporate Law

Melissa Coulombe Beauchesne
Roger Williams University School of Law

Danielle T. Jenkins
Roger Williams University School of Law

Corporate Law. *Doe v. Gelineau,* 732 A.2d 43 (R.I. 1999). In order for a corporation to be liable for acts beyond the scope of its corporate character, it is necessary for the plaintiff to produce enough evidence to support corporate veil piercing liability.

In *Doe v. Gelineau*,[1] the Rhode Island Supreme Court was asked to determine whether the Roman Catholic Bishop of Providence (RCB), a corporation sole,[2] could be held liable for the alleged misconduct of defendant Rhode Island Catholic Orphan Asylum Corporation d/b/a Saint Aloysius Home (St. Aloysius).[3] The court determined that the plaintiff did not meet its burden of producing sufficient evidence in order to disregard the corporate entity of St. Aloysius and impose liability on RCB.[4]

FACTS AND TRAVEL

Plaintiffs, boys between the ages of five and fifteen at the time of the alleged misconduct, were placed at St. Aloysius while in the custody of the State of Rhode Island, Department of Children, Youth, and Families (DCYF).[5] St. Aloysius, a nonprofit corporation, is a foster-care and treatment facility operated by defendant Rhode Island Catholic Orphan Asylum Corporation d/b/a Saint Aloysius Home.[6] While residing at St. Aloysius, plaintiffs allegedly suffered physical, emotional and sexual abuse from the alleged misconduct of certain former St. Aloysius employees and staff members.[7] The plaintiffs filed complaints against numerous defendants that they alleged were affiliated with St. Aloysius and thus responsible for the alleged abuse.[8] St. Aloysius subsequently

1. 732 A.2d 43 (R.I. 1999).

2. A corporation sole is a "corporation consisting of only one person whose successor becomes the corporation upon his death or resignation; limited in the main today to bishops and heads of dioceses." *Id.* at 45 n.3 (quoting Black's Law Dictionary 342 (6th ed. 1990)).

3. *See Doe*, 732 A.2d at 45.

4. *See id.* at 52.

5. *See id.* at 45.

6. *See id.*

7. *See id.* at 45-46.

8. *See id.* at 45. The plaintiffs' cases were consolidated by the superior court. The named defendants included the following individuals and entities:

> [RCB,] DCYF; Lina D'Amario Rossi, individually and in her capacity as the Director of DCYF; Steven Lieberman, individually and in his capacity as the Assistant Director of DCYF; Kenneth Fandetti, individually and in his capacity as the Executive Director of DCYF; Carol Spizirri, individu-

closed on or about January, 1994, when investigations into plaintiffs' claims were conducted.[9]

The defendant, RCB, was created in 1900 as a corporation sole.[10] Through its creation, it was granted property holding and management functions.[11] At the time of the alleged misconduct at St. Aloysius, Bishop Louis E. Gelineau (Bishop Gelineau) was the exclusive officer of RCB.[12] In 1972, RCB ventured beyond its statutorily authorized property holding and management functions and began to operate various diocesan activities.[13] These activities included: operating the diocesan Priests Personnel Office, the Office of Worship, the Office of Communication, the Building Commission, and the Fiscal Office;[14] paying the stipends of various diocesan officials; entering into contracts with certain outside consultants regarding property management of the diocese; and, accounting and legal services.[15]

In their complaints, plaintiffs claimed that RCB was liable in part for plaintiffs' alleged abuse on the basis that RCB was negligent in hiring, retaining and supervising St. Aloysius' staff and its operation.[16] RCB filed a motion for summary judgment relying on section 2 of the 1941 Rhode Island Acts & Resolves (the Act).[17] RCB argued that as a matter of law it could not be held liable be-

---

ally and in her capacity as the Assistant Administrator of DCYF; Rhode Island Catholic Orphan Asylum Corporation d/b/a Saint Aloysius Home (St. Aloysius); Father Robert McIntyre, the Managing Director of St. Aloysius; and Bishop Louis E. Gelineau, in his capacity as the Chief Administrative and Operating Officer of the Diocese of Providence (diocese), in his capacity as the single officer of RCB, and in his capacity as the President, Treasurer, and Director of St. Aloysius. . . . RCB is the only defendant involved in this appeal.

Id. n.4.

9. *See id.* at 46.

10. *See id. See also* 1941 R.I. Acts & Resolves, § 1 at 449-51 (outlining the creation of the corporation sole of the RCB and the powers and authorities of RCB); 1941 R.I. Acts & Resolves, § 2 (describing the property holding and management functions of RCB).

11. *See id.*

12. *See Doe*, 732 A.2d at 46.

13. *See id.*

14. The Fiscal Office "provided accounting services to some of the corporations through which the Roman Catholic church carried on its temporal work in the diocese." *Id.*

15. *See id.*

16. *See id.*

17. *See id. See also* 1941 R.I. Acts & Resolves, § 2 at 450-51.

cause the Act limited RCB's powers and liabilities to matters concerning its holding and management of church property.[18] Therefore, because RCB was not authorized to assign priests to St. Aloysius, or to discipline or supervise priests assigned there, it could not be held liable for any alleged wrongdoing at St. Aloysius.[19] RCB also averred that it had no role in the funding, operations, management, and/or supervision of the St. Aloysius staff and therefore could not be held liable.[20]

Plaintiffs responded that the purpose of the Act is not to shield RCB from liability.[21] Plaintiffs argued that St. Aloysius' separate corporate existence should be pierced and liability imposed on RCB because St. Aloysius was under the ultimate control of RCB.[22] Plaintiffs based this argument on the fact that RCB's sole officer, Bishop Gelineau, served as the President, Treasurer and Director of St. Aloysius.[23] Plaintiffs failed to produce any evidence that demonstrated that RCB was involved in any of the hiring, retaining or supervising of St. Aloysius staff and its operations.

The superior court granted RCB's summary judgment motion.[24] The motion justice's decision relied upon the limited enumerated powers vested to RCB by the Act.[25] The motion justice found that there was no evidence that RCB was involved in this case because the allegations went beyond RCB's potential liability in its statutorily authorized property holding and management activities.[26] The plaintiffs appealed from the judgment entered by the superior court.

ANALYSIS AND HOLDING

The supreme court affirmed the decision of the superior court, finding that there was not enough evidence in the record to support

18. *See Doe*, 732 A.2d at 46.
19. *See id.* at 47.
20. *See id.*
21. *See id.*
22. *See id.*
23. *See id.*
24. *See id.*
25. *See id.*
26. *See id.* Plaintiffs also failed to present any evidence to hold RCB liable within its statutorily granted powers by, for example, presenting evidence that "RCB owned the real estate on which St. Aloysius was located or any of the personal property involved in the operations." *Id.* at 47 n.8.

a corporate veil piercing of St. Aloysius and hold RCB liable.[27] However, the court did find that the act, which granted RCB its property holding and management activities, did not shield it from liability of other misconduct outside of its statutorily granted powers.

On appeal, plaintiffs continued to argue that although St. Aloysius was its own corporate entity, its veil should be pierced and liability extended to RCB, who allegedly controlled the affairs of St. Aloysius and allowed St. Aloysius to hold itself out as an agency of the diocese.[28] The supreme court acknowledged that although the criteria for corporate veil piercing is fact specific and varies with the particular circumstances,[29] a corporate entity will be disregarded only when it would be unjust and inequitable not to do so.[30] In order for liability to be imposed upon the parent corporation in a parent-subsidiary relationship, the evidence presented by the plaintiffs, in the totality of the circumstances, must demonstrate "'that the parent dominated the finances, policies, and practices of the subsidiary.'"[31] However, if two corporations are connected by way of common-stock ownership, each corporation will be respected as its own until the totality of circumstances and evidence presented indicate that one is being controlled and organized by the other so that it is merely an agent of the controlling corporation.[32]

The court held that there was not enough evidence demonstrating RCB's significant involvement or control over St. Aloysius to hold it liable.[33] The corporate veil of St. Aloysius will not be pierced to hold RCB liable for the mere fact that Bishop Gelineau acted as the ecclesiastical head of the diocese and as the President, Treasurer and Director of St. Aloysius.[34] Plaintiffs failed to prove

---

27. *See id.* at 45.

28. *See id.* at 48.

29. *See id.* (citing Miller v. Dixon Indus. Corp., 513 A.2d 597, 604 (R.I. 1986)).

30. *See id.* (quoting R & B Elec. Co. v. Amco Constr. Co., 471 A.2d 1351, 1354 (R.I. 1984); Vennerbeck & Clase Co. v. Juergens Jewelry Co., 164 A.2d 509, 510 (1933)).

31. *Id.* (quoting *Miller*, 513 A.2d at 604).

32. *See id.* at 48-49 (quoting Vucci v. Meyers Bros. Parking Sys., Inc., 494 A.2d 530, 536 (R.I. 1985) (quoting United Transit Co. v. Nunes, 209 A.2d 215, 219 (1965))).

33. *See id.* at 49.

34. *See id.* (citing Richfood, Inc. v. Jennings, 499 S.E.2d 272, 276 (Va. 1998); Landry v. St. Charles Inn, Inc., 446 So. 2d 1246, 1251 (La. Ct. App. 1984); Cluster

that RCB, through Bishop Gelineau, controlled St. Aloysius to the extent that it was a mere agent or instrumentality of RCB.[35] Furthermore, the record provided no indication that when Bishop Gelineau acted for St. Aloysius, he was acting under the guise of RCB.[36]

Plaintiffs attempted to present further evidence of RCB's alleged control of St. Aloysius. To this end, plaintiffs provided evidence that a multi-million dollar insurance policy had been issued in the name of the Roman Catholic Bishop of Providence, not RCB.[37] The defendants submitted testimony that the Roman Catholic Bishop of Providence kept records of the various insurance policies that St. Aloysius held.[38] The defense also conceded that the insurance policy provided defense and liability coverage for St. Aloysius and Bishop Gelineau.[39] The supreme court held that the information regarding the insurance policy was immaterial as to whether or not RCB controlled St. Aloysius because plaintiffs failed to present any evidence of the significance of the policy as it relates to RCB and RCB's control over St. Aloysius.[40]

The plaintiffs also produced some of St. Aloysius' personnel policies issued in the name of the diocese.[41] However, defendants testified that St. Aloysius had its own policy manual that governed its relationship with its employees and staff.[42] Plaintiffs submitted this manual and other documents, such as the report of alleged abuse at St. Aloysius, into evidence, but failed to prove that these items were ever sent to the diocese or RCB.[43] Although it was determined that St. Aloysius sent to the diocesan officials an annual independent financial audit and proposals for changes to its personnel manual, the court found that none of the facts provided any proof of RCB's control of St. Aloysius, and thus potential liability for the acts committed there.[44]

Builders, Inc. v. Quaker Heritage, Inc., 344 N.Y.S.2d 606, 609 (N.Y. App. Div. 1973)).

35. *See id.* (citing *Vucci*, 494 A.2d at 536).
36. *See id.* at 49-50.
37. *See id.* at 50.
38. *See id.*
39. *See id.*
40. *See id.*
41. *See id.*
42. *See id.*
43. *See id.*
44. *See id.* at 51.

Finally, the plaintiffs attempted to show RCB's control of St. Aloysius by pointing to the fact that Bishop Gelineau was the publisher of the *Providence Visitor*.[45] The *Providence Visitor* is a newspaper which establishes itself as the voice of the diocese and has documented some of Bishop Gelineau's involvement with the management of St. Aloysius.[46] Once again, the court noted that this evidence was insufficient to link RCB with the affairs of St. Aloysius.[47] There was no evidence of financial support by RCB. Furthermore, RCB submitted evidence that St. Aloysius and the state, via DCYF, had entered into contracts for the care of plaintiffs.[48] RCB was not a party to these contracts. Under these facts, there was insufficient proof that RCB, through Bishop Gelineau, controlled the finances, management and/ or operations of St. Aloysius.[49] Nor was there any evidence that the court should pierce the corporate veil in order to prevent an injustice.[50]

CONCLUSION

A corporation sole may be subject to veil piercing liability, provided that the totality of circumstances and evidence presented by the plaintiffs support such an outcome. Evidence must be submitted that the parent corporation so dominated the operations of the subsidiary that it is inequitable to recognize the latter's separate corporate entity. If enough evidence is presented, a corporation sole may be liable for conduct outside of its statutorily sanctioned property holding and management activities.

Melissa Coulombe Beauchesne

45. *See id.*
46. *See id.*
47. *See id.*
48. *See id.*
49. *See id.*
50. *See id.*

Corporate Law. *McCrory v. Spigel*, 740 A.2d 1274 (R.I. 1999). In a case operating under the principles of indemnity, a showing of negligence by the indemnitor, with the negligence causing harm to the indemnitee, is not a necessary element under the theory of equitable indemnity.

FACTS AND TRAVEL

In *McCrory v. Spigel*,[1] the Rhode Island Supreme Court upheld a superior court grant of summary judgment in favor of plaintiffs, Glenn and Ann McCrory (the McCrorys).[2] The McCrorys brought suit, as owners of an automobile dealership, against the defendant, Robert Spigel, for acting as an unauthorized agent of their dealership.[3] The McCrorys' automobile dealership was licensed by the State of Rhode Island to service and sell automobiles.[4] The dealership was known as Frenchtown Auto Sales (Frenchtown).[5] The McCrorys first came into contact with the defendant in 1993, when they entered into an oral agreement whereby the McCrorys would rent space in the service department of their business to the defendant.[6] In return, the defendant would service the vehicles individually, and "eventually under the corporate name of A Smiling Mr. Bob Enterprises, Inc. (Smiling Mr. Bob)."[7] The oral agreement also provided the defendant with a commission on any vehicle he sold on the Frenchtown lot or at auction that was owned by Frenchtown.[8]

However, problems arose when defendant agreed to purchase vehicles from his nephew in New York.[9] After determining that he would make a profit from selling the automobiles, the defendant contacted his nephew in order to arrange the purchase.[10] Defendant claimed he checked the vehicle identification numbers with the police department in order to be certain that the vehicles were not

1. 740 A.2d 1274 (R.I. 1999).
2. *See id* at 1275.
3. *See id.* at 1276.
4. *See id.* at 1275.
5. *See id.*
6. *See id.*
7. *Id.*
8. *See id.*
9. *See id.*
10. *See id.*

stolen.[11] Defendant's nephew delivered three vehicles: two were sold to Apollo Auto Sales in Cumberland and the third was sold to Tarbox South County Toyota in North Kingstown.[12] The Toyota 4-Runner was sold to Tarbox for $18,000.[13] The defendant gave $14,000 of the sale price to his nephew.[14]

Defendant subsequently received a telephone call from an employee at Apollo Auto Sales indicating that the cars sold to them by the defendant were stolen.[15] Defendant retrieved the cars from Apollo and refunded the amount paid to him by the dealership.[16] Defendant claimed he then contacted Tarbox and the Rhode Island State Police and informed them that the vehicle he had sold to the dealership was stolen.[17] Defendant, however, never reimbursed Tarbox the money that the dealership had paid for the Toyota 4-Runner.[18]

The McCrorys were contacted by the Rhode Island Motor Vehicle Dealers Commission and were told "a stolen vehicle had been sold using their license number."[19] The McCrorys filed suit against defendant in June of 1997 in order to collect the money owed to Tarbox.[20] They claimed that defendant "unlawfully used their license number and held himself out as an agent of Frenchtown to sell automobiles that Spigel knew or should have known were stolen."[21] The superior court granted the McCrorys' motion for summary judgment seeking indemnification based on the theory of equitable right of indemnity, indicating that defendant would be "potentially liable to Tarbox for conveying stolen goods, if not criminally, at least negligently."[22] The defendant subsequently appealed.

---

11. *See id.*
12. *See id.*
13. *See id.*
14. *See id.*
15. *See id.*
16. *See id.*
17. *See id.* at 1275-76.
18. *See id.* at 1276.
19. *Id.*
20. *See id.*
21. *Id.*
22. *Id.*

ANALYSIS AND HOLDING

Agency

Defendant's first argument on appeal stated that the McCrorys erred in bringing suit against him as an individual because the suit should have been filed against the corporate entity of Smiling Mr. Bob.[23] Only after bringing suit against the corporation and successfully piercing the corporate veil could the McCrorys bring suit against defendant as an individual.[24] The Rhode Island Supreme Court disagreed, however, finding that the McCrorys' claim against defendant was appropriate.[25] The court evaluated the agreement between the McCrorys and defendant in two distinct parts: the leasing agreement that allowed defendant to repair vehicles as a corporation and the agreement that permitted defendant, as an individual, to sell automobiles for the McCrorys' dealership.[26] Smiling Mr. Bob, the corporation, was not authorized to sell cars nor was it licensed by the state to act in such a capacity.[27] Consequently, the court held that there was no corporate veil that needed to be pierced in order to reach the defendant since it was the defendant, as an individual, who contracted to sell automobiles for Frenchtown.[28]

Indemnity

Defendant also argued that allowing the McCrorys to recover under the theory of equitable indemnity was an error by the trial justice.[29] The trial justice applied the required elements of equitable indemnification and found that each was satisfied, thus leaving summary judgment, in favor of the McCrorys, as the only appropriate resolution.[30] The three elements necessary to recover on the theory of equitable indemnity include: "first, the party seeking indemnity must be liable to a third party; second, the prospective indemnitor must also be liable to the third party; and third, as between the prospective indemnitee and indemnitor, the obligation

23. *See id.*
24. *See id.*
25. *See id.*
26. *See id.*
27. *See id.*
28. *See id.*
29. *See id.*
30. *See id.*

ought to be discharged by the indemnitor."[31] Defendant claimed that the third element was absent in the present case and that the McCrorys should have demonstrated that their injury was caused by the negligence of the defendant in order to show that the third element was successfully proven.[32] The Rhode Island Supreme Court, however, disagreed with defendant's contention and agreed with the trial justice's finding that the third element was present.[33] In doing so, the court found it clear that the McCrorys were innocent victims since they neither saw the automobile in question nor knew of any transaction that took place in relation to the vehicle.[34]

CONCLUSION

In *McCrory v. Spigel*, the Rhode Island Supreme Court held that the plaintiffs correctly brought suit against the defendant as an individual and did not need to prove negligence, with damage resulting from that negligence, in order to properly recover for losses incurred under the theory of equitable indemnity.

Danielle T. Jenkins

31. *Id.* at 1276-77 (quoting Muldowney v. Weatherking Prod., Inc., 509 A.2d 441, 443 (R.I. 1986)).
32. *See id.* at 1277.
33. *See id.*
34. *See id.*