

'Piercing the Corporate Veil' with Respect to Monetary Claims Against Commercial Tenants

New York Real Estate Law Reporter, October 2011

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In order to shield themselves from liability for business debts, business owners often set up corporations or limited liability companies through which they conduct business affairs. In keeping with such purpose, these corporate entities are often signatories of commercial real estate leases. Frequently, however, landlords obtain money judgments against corporate tenants for unpaid sums due under such leases, which judgments turn out to be uncollectible.

In some cases, landlords have persuaded courts to "pierce the corporate veil," so as to recover such sums from a corporate tenant's creditworthy parent entity and/or principal(s). In other cases, courts have refused to pierce the corporate veil, thus prohibiting a landlord's ability to pursue anyone other than the signatory tenant for debts arising under a commercial lease. This article discusses when a court will, or will not, pierce the corporate veil.

When a Court Will Pierce the Veil

It is a "well established fact that a business can be incorporated for the very purpose of enabling its proprietor to escape personal liability ... " *Treeline Mineola, LLC v. Berg*, 21 A.D.3d 1028, 1029, 801 N.Y.S.2d 407 (2d Dep't 2005). As a result, "the corporate form is not lightly to be disregarded" in an action to pierce the corporate veil. *Id.*

Generally, "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) such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff's injury." *Morris v. New York State Dept. of Taxation and Finance*, 82 N.Y.2d 135, 141, 603 N.Y.S.2d 827 (1993). There is no rigid formula to determine when a court will pierce the corporate veil; rather, the outcome will turn on the facts of each particular case. The factors courts will use in deciding whether to pierce the corporate veil were stated most recently in *Peery v. United Capital Corp.*, 84 A.D.3d 1201, 924 N.Y.S.2d 470, 473 (2d Dep't 2011):

- (1) the absence of the formalities and paraphernalia that are part and parcel of the corporate existence, *i.e.*, issuance of stock, election of directors, keeping of corporate records and the like, (2) inadequate capitalization, (3) whether funds are put in and taken out of the corporation for personal rather than corporate purposes, (4) overlap in ownership, officers, directors, and personnel, (5) common office space, address and telephone numbers of corporate

entities, (6) the amount of business discretion displayed by the allegedly dominated corporation, (7) whether the related corporations deal with the dominated corporation at arms length, (8) whether the corporations are treated as independent profit centers, (9) the payment or guarantee of debts of the dominated corporation by other corporations in the group, and (10) whether the corporation in question had property that was used by other of the corporations as if it were its own.

A Case in Point

Ventresca Realty Corp. v. Houlihan, 41 A.D.3d 707, 838 N.Y.S.2d 609 (2d Dep't 2007), illustrates when a court will pierce the corporate veil and hold a principal or parent corporate entity liable for a corporate tenant's debts. There, although a corporate tenant executed a lease for office space, the corporate tenant's principals occupied the premises and transacted their own business therein. With about six years remaining on the lease's term, the principals abruptly vacated the premises and the corporate tenant ceased paying rent.

The landlord obtained a judgment against the corporate tenant for unpaid rent and related damages. The judgment, however, was uncollectible. As a result, the landlord commenced an action to hold the principals personally liable. The Supreme Court, Westchester County denied the landlord's motion for summary judgment, but the Second Department reversed:

The evidence demonstrated that the corporation was a mere 'dummy' or 'shell' entity created solely for the purpose of signing the lease. The corporation owned no assets, held no investments, conducted no business, had no employees, did not possess its own telephone line, and had no income other than the funds periodically contributed to it by the individual defendants so that its monthly rent obligation could be met. Moreover, the corporation held no regular meetings, maintained no corporate records or minutes, was inadequately capitalized, and apparently held no regular elections of directors and officers. Accordingly, the proof established, as a matter of law, that the individual defendants completely dominated and controlled the corporation, and abused the corporate form to advance their own personal interests, by exercising that control to commit a wrong against the plaintiff in vacating the premises and causing the breach of the lease. Under these circumstances, the plaintiff is entitled to pierce the corporate veil and hold the individual defendants personally liable.

41 A.D.3d at 610-11 (citations omitted). See also *Galin Partnership v. Flynn*, 295 A.D.2d 473, 744 N.Y.S.2d 345 (2d Dep't 2002); *Commercial Sites Co. v. Prestige Photo Studios, Inc.*, 272 A.D.2d 360, 707 N.Y.S.2d 491 (2d Dep't 2000); *CC Ming (USA) Ltd. P'Ship v. Champagne Video Inc.*, 232 A.D.2d 202, 648 N.Y.S.2d 21 (1st Dep't 1996); *Simplicity Pattern Co., Inc. v. Miami Tru-Color Off-Set Service*,

Inc., 210 A.D.2d 24, 619 N.Y.S.2d 29 (1st Dep't 1994); *Fern v. Adjimi*, 197 A.D.2d 444, 602 N.Y.S.2d 615 (1st Dep't 1993).

Rejection of a Veil-Piercing Claim

Joseph Kali Corp. v. A. Goldner, Inc., 49 A.D.3d 397, 859 N.Y.S.2d 1 (1st Dep't 2008), typifies those instances where a landlord's veil-piercing claim is rejected. In this case, a corporate tenant obtained a money judgment against the landlord, who responded by attempting to set off a judgment it had obtained against the tenant's affiliate on the ground that it was the tenant's mere alter ego. The First Department rejected the landlord's argument:

... [A]n inference of abuse of the corporate structure ordinarily 'does not arise ... where a corporation was formed for legal purposes or is engaged in legitimate business.' There is no indication that Dorani was created for an improper purpose. Indeed, Holding Corp. never offered any evidence that Dorani, much less Kali, engaged in any fraudulent or otherwise improper conduct as might warrant piercing the corporate veil ... (citations omitted).

Id. at 399.

Courts will also reject landlords' veil-piercing claims where the commercial lease envisioned some limited measure of liability for the corporate tenant's principal — indicating that the parties considered, and rejected, the possibility of holding the principal liable for any further sums. See *Treeline Mineola, LLC v. Berg, supra*; *Hillcrest Realty Co. v. Gottlieb*, 208 A.D.2d 803, 618 N.Y.S.2d 394 (2d Dep't 1994). In at least two other cases, the landlord's claims failed at the pleading stage for failing to sufficiently particularize the alleged fraudulent conduct necessary to sustain a veil-piercing claim, as required by CPLR 3013 and 3016(b). See *Russo v. Heller*, 80 A.D.3d 531, 915 N.Y.S.2d 268 (1st Dep't 2011); *Sheinberg v. 177 E. 77 Inc.*, 248 A.D.2d 176, 670 N.Y.S.2d 19 (1st Dep't 1998).

Conclusion

In short, courts will not elevate form over substance and, in a proper case, will hold the parties responsible for a corporate tenant's monetary lease defaults to account. On the other hand, in order for a landlord's veil-piercing claim to be successful, the landlord must sufficiently allege fraudulent conduct and, in addition to meeting the high standard necessary to pierce the corporate veil, must not have limited the defendant's liability in the lease.

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