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ARTICLE

Piercing the Corporate Veil: A Case Study and Best Practices Checklist

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During an expert deposition in a Chicago lease dispute, this exchange occurred:

Q: You are a law professor, right?

A: Yes.

Q: Do you remember you were my law professor at UChicago?

A: I do not remember that. I apologize.

The professor can certainly be forgiven given the vast number of students he taught corporate law, including this unmemorable author. The topic of discussion was the corporate veil-piercing doctrine, which is notoriously unpredictable and the source of much disagreement in the legal community.

Our client was a landlord who sued a co-working space tenant for failure to pay rent. And the case was also brought against the tenant's parent company under an alter-ego theory — that is, alleging the parent company (that did not sign the lease) should be liable for the debt of the defunct subsidiary tenant (that did sign) such that the corporate veil should be pierced.

CORPORATE VEIL-PIERCING DOCTRINE

The law treats entities as separate and distinct from their shareholders, related entities and affiliates. Generally, the debt or obligations of an entity cannot be imputed to others. This separation, commonly referred to as the "corporate veil," allows entities to internalize both the benefits and burdens of corporate actions, such as signing contracts, suing (and being sued) and complying with the law. The protections offered by the corporate veil (very rightly) encourage and cordon off risk. That is, the only skin in the game is the entity's assets.

Due to its vital role in corporate America, the corporate veil is very difficult to pierce. Though standards vary across jurisdictions, a party seeking to pierce the corporate veil must generally show that "the owners, through their domination [of the corporate entity], abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against the plaintiff such that a court in equity will intervene." Plaintiffs often try to meet this standard by demonstrating that:

- The owners or shareholders controlled the entity to such an extent that the corporation had no independent existence, and they were merely alter egos of the corporation.
- The corporate form was used fraudulently or for an improper purpose.
- Such improper or fraudulent use of the corporation caused harm to the plaintiff.
- The corporate entity must be disregarded to prevent an injustice.

If this standard is met, assets other than the entity's (such as personal assets) can satisfy a judgment. It is thus critically important to follow corporate formalities and not abuse the corporate form.

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