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Piercing the Corporate Veil: What You Find on the Other Side May Surprise You

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Corporate & Finance at Much

Whether or not corporations are people, they are certainly organized, owned, and run by people. And although there are many reasons to set up a corporation, by far the most important is the "**corporate shield**." This so-called shield generally protects those who own a corporation (or a limited liability company (LLC)) from the company's debts and other liabilities.

There are exceptions, of course, as there always are when dealing with legal principles. One such exception can occur when the owners of a company organize and control that company in such a way that to maintain the fiction of a separate entity would either sanction a fraud or promote injustice.

Put another way, an Illinois court will pierce the corporate veil if it finds that there is "such a unity of interest in ownership that the separate personalities of the corporation and the parties who compose it no longer exist, and…circumstances are such that adherence to the fiction of a separate corporation would promote injustice or inequitable circumstances" (see ***Tower Investors LLC v. 111 East Chestnut Consultants, Inc*.**, a 2007 Illinois Appellate Court, First District, case).

In determining whether there is such a unity of interest, courts have traditionally looked at a number of factors, including, among others, the adequacy of capitalization, failure to observe corporate formalities, payment or non-payment of dividends, absence of corporate records, comingling of funds, and diversion of assets. All of these factors seek to answer one question: Have the owners acted as if the company does not really exist? If so, a court may pierce the corporate veil and hold the individual owners liable in order to prevent an injustice.

But what if parties other than the owners control the company? Can a court pierce the corporate veil and hold these non-owners liable?

Illinois Appellate Court Weighs In

This question has split courts and commentators throughout the country, although until recently Illinois has not directly dealt with the issue. That changed on April 10, 2014, when the Illinois Appellate Court, First District, decided Buckley v. Abuzir. In that case, the court adopted the majority position, holding that non-owners can be held liable once a corporation's shield is pierced. In so finding, the court ruled that the defendant's status, as or as not an owner, was merely one factor in determining whether the veil could be pierced. It was not dispositive. If evidence supported a finding that the individual non-owner controlled the company, that person could be liable.

Take Notice, Illinois Businesses (and Individuals with Business Interests)

This ruling has significant ramifications for Illinois businesses. Merely being a non-owner does not immunize someone from potential liability. And even if a corporation or LLC is owned by another corporation or LLC, the individuals who are actually in control might face liability even though they are not owners. Accordingly, it is even more important today to examine your company's structures to determine whether there is any risk in this regard. Because once a court pierces the corporate veil, it may find you on the other side.

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