PJI 2:266. Liability for the Conduct of Another-Piercing the Corporate Veil

As you have heard, the plaintiff AB claims that [*add where appropriate***: the defendant] CD [***state nature of plaintiff's substantive claims(s)***]. AB also claims that the defendant(s) EF [***identify defendant corporate/limited liability company owner(s)***], the owner(s) of CD, should be held responsible for what CD did.**

CD is a (corporation, limited liability company). Ordinarily, the owner(s) of a (corporation, limited liability company) (is, are) not responsible for what the (corporation, limited liability company) does. In most situations, the (corporation, limited liability company) is treated as separate from its owner(s) and only the (corporation, limited liability company) itself is responsible for what it does. That protection is sometimes referred to as the corporate veil or shield. However, the protection from liability that is ordinarily given to the owner(s) of (corporations, limited liability companies) is not absolute. Under certain circumstances, the (corporation's, limited liability company's) owner(s) may lose the protection of the corporate veil or shield and be held responsible for what the (corporation, limited liability company) did. We call this "piercing the corporate veil or shield."

The corporate veil or shield may be pierced when (1) the (corporation's, limited liability company's) owner(s) completely controlled the (corporation, limited liability company) and did not treat it as a separate business entity and (2) the (corporation's, limited liability company's) owner(s) used (his, her, its, their) complete control to commit a fraud or a dishonest or an unjust act in connection with the transaction about which you have heard and in violation of the injured party's rights. Both of these elements must be proved; the (owner's, owners') complete control of the (corporation, limited liability company) is not enough by itself to remove the protection of the corporate veil or shield.

In this case, AB claims that (1) EF completely controlled CD and failed to treat it as a separate business entity in that [*state facts on which AB's claim of domination and control is based***] and (2) EF used its complete control of CD to commit a fraud or a dishonest or an unjust act against AB in that [***state nature of plaintiff's substantive claim(s)***]. EF claims that [***state owner-defendant's claims such as (he, she, it, they) did not dominate the (corporation/limited liability company), did not disregard its status as a separate business entity, did not use (his, her, its, their) control to commit a fraud or a***

dishonest or an unjust act against plaintiff; also state the facts on which defendant's claim is based]**.**

AB has the burden of proving by a preponderance of the evidence (1) that EF completely controlled CD and did not treat it as a separate business entity and (2) that EF used its complete control of CD to commit a fraud or a dishonest or an unjust act against AB in that [*state nature of CD's claimed wrong***]. If you decide that EF did not completely control CD or that EF treated CD as a separate business entity, you will find that EF is not responsible for what CD did [***add where appropriate***: on this claim]**. **If you decide that EF did completely control CD and did not treat CD as a separate business entity, you will go on to consider whether EF used its control of CD to commit a fraud or a dishonest or an unjust act against AB in that [***state plaintiff's claim(s)***].**

In deciding whether AB has met (his, her, its) burden of proof, you should consider (1) whether EF ignored the separate corporate identity by [*identify formalities plaintiff claims were ignored, such as required votes by directors, separate books and records***], (2) whether CD did not have enough money and insurance to meet its own bills and debts and to meet its liabilities, including any liability to AB, (3) whether EF did not separate CD's assets and money from (his, her, its) own money and assets and (4) whether EF used CD's money or assets for personal needs. [***Where plaintiff seeks to hold a parent entity liable for the obligations of a subsidiary, state, as appropriate***: In addition, you should consider whether CD and EF's directors, officers and personnel overlapped, whether CD and EF used the same office space and telephone numbers, whether CD permitted EF to make its own business decisions, whether CD and EF did not negotiate and contract with each other as if they were independent businesses, whether EF treated CD and the other companies it owns as independent profit centers, whether EF and EF's affiliates used CD's money or assets as if it were its own and whether EF's debts have been paid or have been guaranteed by CD or the other companies within the group].**

If you decide that EF used its control of CD to commit a fraud or a dishonest or an unjust act against AB in that [*state plaintiff's claim(s)***], you will find that EF is liable to AB for what CD did [***state nature of plaintiff's substantive claim(s)***]. If you decide that EF did not use its control of CD to commit a fraud or a dishonest or an unjust act against AB in that [***state plaintiff's claim(s)***], you will find that EF is not liable to AB [***add where appropriate***: on this claim]**.

Caveat 1: The doctrine of "piercing the corporate veil" presupposes that the corporation has an underlying obligation to plaintiff, Morris v State Dept. of Taxation and Finance, 82 NY2d 135, 603 NYS2d 807, 623 NE2d 1157. The doctrine does not furnish a basis for a cause of action independent of plaintiff's cause of action against the corporation or limited liability company, id; ARB Upstate Communications LLC v R.J. Reuter, L.L.C., 93 AD3d 929, 940 NYS2d 679; Matter of Moak, 92 AD3d 1040, 938 NYS2d 648. Accordingly, the charge should be given only when plaintiff has a claim against the corporation or limited liability company. If the claims against the corporation or limited liability company and the individual owners have been interposed in the same action, the jurors must be told that they should consider the liability of the owners only if they have first determined that the corporation or limited liability company is liable.

Caveat 2: The doctrine of "piercing the corporate veil" is available as a basis for imposing liability on a corporation's owners in cases involving tort claims as well as in cases involving commercial wrongs, Walkovsky v Carlton, 18 NY2d 414, 276 NYS2d 585, 223 NE2d 6 (vehicular negligence); Cobalt Partners, L.P. v GSC Capital Corp., 97 AD3d 35, 944 NYS2d 30 (breach of contract); Grammas v Lockwood Associates, LLC, 95 AD3d 1073, 944 NYS2d 623 (fraud and breach of warranty); McCloud v Bettcher Industries, Inc., 90 AD3d 1680, 935 NYS2d 815 (products liability); Lee v Arnan Development Corp., 77 AD3d 1261, 909 NYS2d 826 (premises liability); Longshore v Paul Davis Systems of Capital Dist., 304 AD2d 964, 759 NYS2d 204 (worker's on-the-job injuries). Accordingly, the charge should be given in any case where plaintiff has made a sufficient factual showing.

Caveat 3: There are numerous cases stating that a party seeking to pierce the corporate veil must bear a "heavy burden" of showing that the corporation was dominated as to the transaction attacked and that the domination was the instrument of fraud or wrongful or inequitable consequences, TNS Holdings, Inc. v MKI Securities Corp., 92 NY2d 335, 680 NYS2d 891,703 NE2d 749; Cobalt Partners, L.P. v GSC Capital Corp., 97 AD3d 35, 944 NYS2d 30; Etex Apparel, Inc. v Tractor Int'l Corp., 83 AD3d 587, 922 NYS2d 315; Sheridan Broadcasting Corp. v Small, 19 AD3d 331, 798 NYS2d 45; Retropolis, Inc. v 14th St. Dev. LLC, 17 AD3d 209, 797 NYS2d 1. However, the "heavy burden" standard has not been specifically defined in the case law and, further, has been used by the courts only to determine motions to dismiss or for summary judgment, Cobalt Partners, L.P. v GSC Capital Corp., supra; Etex Apparel, Inc. v Tractor Int'l Corp., supra; Sheridan Broadcasting Corp. v Small, supra; Sheridan Broadcasting Corp. v Small, supra; Retropolis, Inc. v 14th St. Dev. LLC, supra; see TNS Holdings, Inc. v MKI Securities Corp., supra (motion to stay arbitration). For that reason, the pattern charge, which is to be used in jury trials, utilizes the traditional civil standard of proof based on the preponderance of the evidence.

Based on James v Loran Realty V Corp., 20 NY3d 918, 956 NYS2d 482, 980 NE2d 532; ABN AMRO Bank, N.V. v MBIA Inc, 17 NY3d 208, 928 NYS2d 647, 952 NE2d 463; East Hampton Union Free School Dist. v Sandpebble Builders, Inc., 16 NY3d 775, 919 NYS2d 996, 944 NE2d 1135; TNS Holdings, Inc. v MKI Securities Corp., 92 NY2d 335, 680 NYS2d 891,703 NE2d 749; Morris v State Dept. of Taxation and Finance, 82 NY2d 135, 603 NYS2d 807, 623 NE2d 1157; Walkovsky v Carlton, 18 NY2d 414, 276 NYS2d 585, 223 NE2d 6; Bartle v Home Owners Cooperative, 309 NY 103, 127 NE2d 832; Berkey v Third Avenue Ry. Co., 244 NY 84, 155 NE 58.

Comment

Corporations have an existence independent of their owners and are ordinarily treated as separate legal entities, Morris v State Dept. of Taxation and Finance, 82 NY2d 135, 603 NYS2d 807, 623 NE2d 1157; Port Chester Electric Construction Co. v Atlas, 40 NY2d 652, 389 NYS2d 327, 357 NE2d 983; Bartle v Home Owners Cooperative, 309 NY 103, 127 NE2d 832. Further, the owners are normally not liable for the debts of the corporation, and, in fact, it is "perfectly legal" to incorporate for the express purpose of limiting the liability of the owners, Morris v State Dept. of Taxation and Finance, supra; Rapid Tr. Subway Constr. Co. v City of New York, 259 NY 472, 182 NE 145. However, in some limited circumstances, courts have the authority to look past the corporate form where necessary to prevent fraud or to achieve equity, Port Chester Electric Construction Co. v Atlas, supra; Walkovsky v Carlton, 18 NY2d 414, 276 NYS2d 585, 223 NE2d 6; see International Aircraft Trading Co. v Manufacturers Trust Co., 297 NY 285, 79 NE2d 249. This principle applies to limited liability companies as well as to corporations, Colonial Surety Co. v Lakeview Advisors, LLC, 93 AD3d 1253, 941 NYS2d 371; Matias v Mondo Props. LLC, 43 AD3d 367, 841 NYS.2d 279; Retropolis, Inc. v 14th St. Dev. LLC, 17 AD3d 209, 797 NYS2d 1; Limited Liability Company Law § 609. The doctrine may be applicable in a wide variety of cases, including those involving tort claims as well as those involving commercial wrongs, James v Loran Realty V Corp., 85 AD3d 619, 925 NYS2d 492, aff'd 20 NY3d 918, 956 NYS2d 482, 980 NE2d 532 (premises liability); Walkovsky v Carlton, supra (vehicular negligence); Cobalt Partners, L.P. v GSC Capital Corp., 97 AD3d 35, 944 NYS2d 30 (breach of contract); Grammas v Lockwood Associates, LLC, 95 AD3d 1073, 944 NYS2d 623 (fraud and breach of warranty); McCloud v Bettcher Industries, Inc., 90 AD3d 1680, 935 NYS2d 815 (products liability); Lee v Arnan Development Corp., 77 AD3d 1261, 909 NYS2d 826 (premises liability); Longshore v Paul Davis Systems of Capital Dist., 304 AD2d 964, 759 NYS2d 204 (worker's on-the-job injuries).

The doctrine of "piercing the corporate veil" does not constitute a basis for an independent cause of action, Morris v State Dept. of Taxation and Finance, 82 NY2d 135, 603 NYS2d 807, 623 NE2d 1157; ARB Upstate Communications LLC v R.J. Reuter, L.L.C., 93 AD3d 929, 940 NYS2d 679; Matter of Moak, 92 AD3d 1040, 938 NYS2d 648; Old Republic National Title Ins. Co. v Moskowitz, 297 AD2d 724, 747 NYS2d 556. Rather, the doctrine, which is equitable in nature, presupposes that the corporation whose "veil" is to be "pierced" has an underlying liability to plaintiff, Morris v State Dept. of Taxation and Finance, supra; see State v Robin Operating Corp., 3 AD3d 769, 773 NYS2d 137 (claim against allegedly dominant corporation could not be maintained where allegedly dominated corporation was not a party and no basis in the record for concluding that dominated corporation could be liable). For that reason, some courts have held that a claim asserted under the doctrine of "piercing the corporate veil" requires that the allegedly dominated corporation be joined as a party defendant, even if it was the parent corporation that unjustly retained the disputed funds, Stewart Tenants Corp. v Square Indus., 269 AD2d 246, 703 NYS2d 453; see Popowich v Korman, 73 AD3d 515, 900 NYS2d 297; State v Robin Operating Corp., supra. However, it is not necessary to name and serve a corporation that became defunct before the lawsuit was initiated, Spinnell v JP Morgan Chase Bank, N.A., 59 AD3d 361, 873 NYS2d 626. Claims based on the piercing the corporate veil doctrine may be asserted before finding of liability as against codefendant dominated corporation, Ross v Jill Stuart Int'l Ltd., 275 AD2d 650, 713 NYS2d 324. It is not necessary that an unsatisfied judgment be obtained against the dominated corporation before an action against the dominant corporation may be brought, Chase Manhattan Bank (N.A.) v 264 Water St. Assoc., 174 AD2d 504, 571 NYS2d 281; see ABN AMRO Bank, N.V. v MBIA Inc., 17 NY3d 208, 928 NYS2d 647, 952 NE2d 463.

Application of the doctrine of "piercing the corporate veil" requires a fact-based determination, see Millennium Construction, LLC v Loupolover, 44 AD3d 1016, 845 NYS2d 110; Goldman v Chapman, 44 AD3d 938, 844 NYS2d 126; Ventresca Realty Corp. v Houlihan, 41 AD3d 707, 838 NYS2d 6090; Helm v Tri-Lakes Ford-Mercury, Inc., 25 AD3d 901, 809 NYS2d 222. Accordingly, where the elements of the doctrine have sufficiently been pleaded and a sufficient showing has been made in response to a motion for summary judgment, the question is one for resolution by the factfinder, Damianos Realty Group, LLC v Fracchia, 35 AD3d 344, 825 NYS2d 274; First Bank of the Americas v Motor Car Funding, Inc., 257 AD2d 287, 690 NYS2d 17; see Lee v Arnan Development Corp., 77 AD3d 1261, 909 NYS2d 826; Miranco Contracting, Inc. v. Perel, 57 AD3d 956, 871 NYS2d 310; Shelley v Flow Int'l Corp., 283 AD2d 958, 724 NYS2d 244; Rebh v Rotterdam Ventures, Inc., 277 AD2d 659, 716 NYS2d 457.

The corporate form is not to be lightly disregarded, Cobalt Partners, L.P. v

GSC Capital Corp., 97 AD3d 35, 944 NYS2d 30; Treeline Mineola, LLC v Berg, Baccash v Sayagh, 53 AD3d 636, 862 NYS2d 564; 21 AD3d 1028, 801 NYS2d 407; New York Ass'n for Retarded Children, Inc. Montgomery Co. Chapter v Keator, 199 AD2d 921, 606 NYS2d 784. Those seeking to pierce a corporate veil in both tort and contract cases have the heavy burden of showing that the corporation was dominated in connection with the transaction at issue and that the domination was the instrument of fraud or otherwise resulted in wrongful or inequitable consequences, TNS Holdings, Inc. v MKI Securities Corp., 92 NY2d 335, 680 NYS2d 891,703 NE2d 749; Joseph Kali Corp. v A. Goldner, Inc., 49 AD3d 397, 859 NYS2d 1; see James v Loran Realty V Corp., 20 NY3d 918, 956 NYS2d 482, 980 NE2d 532 (plaintiff has burden to show that individual defendants "abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against [plaintiff]"). However, since an action against a corporate owner based on the doctrine of piercing the corporate veil is not the equivalent of an action in fraud, the clear and convincing standard of proof is not applicable, Rotella v Derner, 283 AD2d 1026, 723 NYS2d 801.

In general, the courts will permit "piercing" sufficient to impose liability on the corporate owners upon a showing that (1) the owners exercised complete domination of the corporation and (2) the owner's domination of the corporation was used to commit a fraud or wrong against plaintiff that injured plaintiff, TNS Holdings, Inc. v MKI Securities Corp., 92 NY2d 335, 680 NYS2d 891,703 NE2d 749; Morris v State Dept. of Taxation and Finance, 82 NY2d 135, 603 NYS2d 807, 623 NE2d 1157; see Guptill Holding Corp. v State, 33 AD2d 362, 307 NYS2d 970, affd 31 NY2d 897, 340 NYS2d 638, 292 NE2d 782; Cobalt Partners, L.P. v GSC Capital Corp., 97 AD3d 35, 944 NYS2d 30; ARB Upstate Communications LLC v R.J. Reuter, L.L.C., 93 AD3d 929, 940 NYS2d 679; Heim v Tri-Lakes Ford Mercury, Inc., 25 AD3d 901, 809 NYS2d 222. Domination of the corporation by its owner is not alone sufficient, TNS Holdings, Inc. v MKI Securities Corp., supra; Rebh v Rotterdam Ventures, Inc., 277 AD2d 659, 716 NYS2d 457. Similarly, a parent corporation can never be held liable for the actions of a subsidiary based solely on the parent corporation's ownership of a controlling interest in the subsidiary, Billy v Consolidated Machine Tool Shop, 51 NY2d 152, 432 NYS2d 879, 412 NE2d 934. The proponent of applying the "piercing the corporate veil" doctrine must also show that the domination led to inequity, fraud or malfeasance, Rebh v Rotterdam Ventures, Inc., supra; see James v Loran Realty V Corp., 20 NY3d 918, 956 NYS2d 482, 980 NE2d 532; Casa de Meadows Inc. (Cayman Islands) v Zaman, 76 AD3d 917, 908 NYS2d 628; Goldman v Chapman, 44 AD3d 938, 844 NYS2d 126; Damianos Realty Group, LLC v Fracchia, 35 AD3d 344, 825 NYS2d 274; Island Seafood Co. v Golub, 303 AD2d 892, 759 NYS2d 768. Where a corporation is a mere fragment of a larger combine which actually conducts the business, the larger corporate entity may be held responsible for the acts of that corporation, Billy v Consolidated Machine

Tool Shop, supra; Island Seafood Co. v Golub, 303 AD2d 892, 759 NYS2d 768.

The circumstances of domination that will justify piercing the corporate veil include an individual owner's operating the corporation as a "sham" for the owner's personal activities and a corporation's acting as the "agent," "alter ego" or "mere instrumentality" of its shareholder, Cobalt Partners, L.P. v GSC Capital Corp., 97 AD3d 35, 944 NYS2d 30 ("alter ego"); UBS Securities LLC v Highland Capital Management, L.P., 93 AD3d 489, 940 NYS2d 74 (same); Miller v Cohen, 93 AD3d 424, 939 NYS2d 424 (same); Fernbach LLC v Calleo, 92 AD3d 831, 939 NYS2d 501; John John, LLC v Exit 63 Development, LLC, 35 AD3d 540, 826 NYS2d 657 ("mere instrumentality," "alter ego," "agent"); Island Seafood Co. v Golub, 303 AD2d 892, 759 NYS2d 768; Austin Powder Co. v McCullough, 216 AD2d 825, 628 NYS2d 855; see Butler v Stagecoach Group, PLC, 72 AD3d 1581, 900 NYS2d 541 ("agent" of parent corporation). Mere conclusory allegations of domination and control, however, are insufficient, UMG Records, Inc. v FUBU Records, LLC, 34 AD3d 293, 824 NYS2d 83.

A plaintiff who wishes to pierce the corporate veil does not have to specifically plead fraud, but must establish that the individual defendant's domination of the corporation was used to perpetrate a wrong or injustice against that plaintiff, Morris v State Dept. of Taxation and Finance, 82 NY2d 135, 603 NYS2d 807, 623 NE2d 1157; Rotella v Derner, 283 AD2d 1026, 723 NYS2d 801; Lederer v King, 214 AD2d 354, 625 NYS2d 149. Allegations of domination and control must be accompanied by particularized allegations of consequent wrongs, Sheridan Broadcasting Corp. v Small, 19 AD3d 331, 798 NYS2d 45; see Sheinberg v 177 E. 77, Inc., 248 AD2d 176, 670 NYS2d 19 (plaintiff's allegations must include "particularized statements detailing fraud or other corporate misconduct"); see also East Hampton Union Free School Dist. v Sandpebble Builders, Inc., 16 NY3d 775, 919 NYS2d 496, 944 NE2d 1135 (plaintiff must allege more than improper acts or bad faith by defendants).

Factors to be considered in determining whether the corporation's owners have abused the privilege of doing business in the corporate form include (1) a failure to adhere to corporate formalities, (2) inadequate capitalization, (3) a commingling of assets and (4) application of corporate funds for personal use, East Hampton Union Free School Dist. v Sandpebble Bldrs. Inc., 66 AD3d 122, 884 NYS2d 94, aff'd 16 NY3d 775, 919 NYS2d 996, 944 NE2d 1135; McCloud v Bettcher Indus., Inc., 90 AD3d 1680, 935 NYS2d 815; Superior Transcribing Serv., LLC v Paul, 72 AD3d 675, 898 NYS2d 234. In the context of parent and subsidiary corporations, the foregoing factors are considered, as well as the extent to which there is overlap in ownership, directors, officers and personnel, the use of common office space and telephone numbers, whether the organizations are lacking the separate paraphernalia that are part of the corporate form and the

degree to which the allegedly dominated corporation is permitted to exercise its own business discretion, Forum Ins. Co. v Texarkoma Transp. Co., 229 AD2d 341, 645 NYS2d 786; see Billy v Consolidated Machine Tool Shop, 51 NY2d 152, 432 NYS2d 879, 412 NE2d 934; Island Seafood Co. v Golub, 303 AD2d 892, 759 NYS2d 768; see also AHA Sales, Inc. v Creative Bath Products, Inc., 58 AD3d 6, 867 NYS2d 169. Additional factors include whether the parent and subsidiary dealt with each other at arm's length, whether the corporations within a group are treated as independent profit centers, whether the property of such corporations is used by the others as if it were their own and whether the dominant corporation's debts are paid or guaranteed by the other corporations within the group, Peery v United Capital Corp., 84 AD3d 1201, 924 NYS2d 470; Fantazia Int'l Corp. v CPL Furs New York, Inc., 67 AD3d 511, 889 NYS2d 28; Gateway I Group, Inc. v Park Ave. Physicians, P.C., 62 AD3d 141, 877 NYS2d 95.

No single factor is determinative, Fantazia Int'l Corp. v CPL Furs New York, Inc., 67 AD3d 511, 889 NYS2d 28. At the very least, there must be direct intervention by the owners in the management of the corporation to such an extent that the corporation's paraphernalia of incorporation, directors and officers are completely ignored, Billy v Consolidated Machine Tool Shop, 51 NY2d 152, 432 NYS2d 879, 412 NE2d 934; McCloud v Bettcher Indus., Inc., 90 AD3d 1680, 935 NYS2d 815; Shelley v Flow Int'l Corp., 283 AD2d 958, 724 NYS2d 244; see Lowendahl v Baltimore & Ohio R.R. Co., 247 App Div 144, 287 NYS 62, aff'd 272 NY 360, 6 NE2d 56; Mertz v Seibel Realty, Inc., 265 AD2d 925, 696 NYS2d 598, and one of the corporations is a mere instrumentality, agent or alter ego of the other, Island Seafood Co. v Golub, 303 AD2d 892, 759 NYS2d 768; see Astrocom Electronics, Inc. v Lafayette Radio Electronics Corp., 63 AD2d 765, 404 NYS2d 742. Put another way, the domination of a subsidiary by the parent must be so complete that the subsidiary is merely a department of the parent, Amsellem v Host Marriott Corp., 280 AD2d 357, 721 NYS2d 318.

In the following cases, the allegations and/or evidence were deemed sufficient to justify piercing the corporate veil: ABN AMRO Bank, N.V. v MBIA Inc., 17 NY3d 208, 928 NYS2d 647, 952 NE2d 463 (parent company caused wholly-owned subsidiary to engage in harmful transactions that allegedly shielded billions of dollars in assets from plaintiffs, thereby potentially exposing plaintiffs to significant liability); Last Time Beverage Corp. v F&V Distribution Co., Inc., 98 AD3d 947, 951 NYS2d 77 (limited liability company inadequately capitalized for business venture in issue without loan from sibling company, two companies had overlapping ownership, officers and personnel, shared same office space with other sibling companies and failed to observe certain record-keeping formalities); Cobalt Partners, L.P. v GSC Capital Corp., 97 AD3d 35, 944 NYS2d 30 (allegations that domination and control used to cause subsidiary entity to breach contractual obligation for dominant corporation's own gain); Pae v Chui Yoon, 41

AD3d 681, 838 NYS2d 172 (sole owner of corporation dominated it and was solely responsible for its wrongful failure to pay plaintiff; evidence revealed absence of corporate formalities, such as lack of distinction between corporate funds and defendant's personal funds); Manshion Joho Center Co., Ltd. v Manshion Joho Center, Inc., 24 AD3d 189, 806 NYS2d 480 (individual owner dominated and controlled corporations, disregarded corporate formalities, used corporate funds to pay his personal bills, and effectively stripped assets of corporation to enrich himself while making corporation judgment proof); Godwin Realty Assocs. v CATV Enterprises, 275 AD2d 269, 712 NYS2d 39 (shareholder's stripping of corporate assets to render corporation judgment proof); National Union Fire Ins. Co. of Pittsburgh, Pa. v Bodek, 270 AD2d 139, 705 NYS2d 42 (despite individual defendant's claims that he divested himself of interest and control, defendant instructed corporation's accountants, negotiated its business deals and credit extensions, executed promissory notes, personally guaranteed notes and directed his spouse to use corporate assets for his personal expenses).

In the following cases, the allegations and/or evidence were deemed insufficient to justify piercing the corporate veil: James v Loran Realty V Corp., 20 NY3d 918, 956 NYS2d 482, 980 NE2d 532 (no evidence that defendant attempted to avoid plaintiffs' claim for damages by rendering corporation insolvent); Etex Apparel, Inc. v Tractor Int'l Corp., 83 AD3d 587, 922 NYS2d 315 (common ownership and offices and continuation of part of affiliate's business, but maintained separate corporate identities); SUS, Inc. v St. Paul Travelers Group, 75 AD3d 740, 905 NYS2d 321 (no allegations that parent corporations had directly intervened in management of subsidiary such that subsidiary's paraphernalia of incorporation, directors, and officers were completely ignored); Fantazia Int'l Corp. v CPL Furs New York, Inc., 67 AD3d 511, 889 NYS2d 28 (some common management, but corporations had separate bank accounts, books and records, were incorporated at different times for legitimate purposes, filed separate tax returns and substantially complied with corporate formalities); Longshore v Paul Davis Systems of Capital Dist., 304 AD2d 964, 759 NYS2d 204 (corporations formed for separate purposes and treated by principals as separate and distinct, with no subsidiary relationships, integrated finances or commingled assets); Worldcom, Inc. v Prepay USA Telecom, Corp., 294 AD2d 157, 741 NYS2d 532 (commingling involving only several thousand dollars, where plaintiffs claimed millions of dollars in damages); Lou Atkins Castings, Inc. v M. Fabrikant & Sons, Inc., 216 AD2d 111, 628 NYS2d 98 (affiliate corporations separately capitalized, not formed to conceal or deceive and domination by one corporation not complete); New York Ass'n for Retarded Children, Inc. Montgomery Co. Chapter v Keator, 199 AD2d 921, 606 NYS2d 784 (control of corporation by single shareholder; no showing of illegality or fraud).

Reverse Veil Piercing

Typically, the doctrine of piercing the corporate veil is applied to hold an individual or parent corporation liable for the actions of the business entity he, she or it controls. In general, the corporate veil will not be pierced for the benefit of the corporation or its individual owners, Richbell Information Services Inc. v Jupiter Partners, L.P., 309 AD2d 288, 765 NYS2d 575; see Uribe v Merchants Bank of New York, 239 AD2d 128, 657 NYS2d 613; Matter of Disston Co. [Aktiebolag], 187 AD2d 283, 589 NYS2d 442; Colin v Altman, 39 AD2d 200; 333 NYS2d 432. However, some New York appellate courts have recognized "reverse piercing," in which the controlled corporation or limited liability company is held liable to third parties for the debts or obligations of its owners, Colonial Surety Co. v Lakeview Advisors, LLC, 93 AD3d 1253, 941 NYS2d 371; Spinnell v JP Morgan Chase Bank, N.A., 59 AD3d 361, 873 NYS2d 626; see Sweeney, Cohn, Stahl & Vaccaro v Kane, 6 AD3d 72, 773 NYS2d 420 (discussing reverse-piercing doctrine under New York and Florida law).

As a related matter, the doctrine that a corporation may be the "alter ego" of its parent or sibling corporation has been affirmatively invoked by defendant corporations seeking to associate themselves with the employer of an injured plaintiff and thereby benefit from the Workers' Compensation bar, Thomas v Dunkirk Resort Properties, LLC, 101 AD3d 1721, 957 NYS2d 542; Gonzalez v Woodbourne Arboretum, Inc., 100 AD3d 693; 954 NYS2d 113; Lee v Arnan Development Corp., 77 AD3d 1261, 909 NYS2d 826; Shelley v Flow Int'l Corp., 283 AD2d 958, 724 NYS2d 244.