

## *Amador v. 854 Hermiker Street Corp. et al*, Sup.Ct., Kings Co., 509663/2019 Court Dismisses Case Against the Sole Shareholder of a Corporation

*"The general rule, of course, is that a corporation exists independently of its owners, who are not personally liable for its obligations, and that individuals may incorporate for the express purpose of limiting their liability"*

*"The concept of piercing the corporate veil is an exception to this general rule, permitting, in certain circumstances, the imposition of personal liability on owners for the obligations of their corporation"*

Amador v. 854 Hermiker Street Corp. et al, Sup.Ct., Kings Co., 509663/2019

We are pleased to share this victory with our clients and colleagues, and look forward to the opportunity to continue to share good news.



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### **She Said...**

Tania Amador alleged in her complaint that when she purchased her house, the seller could not provide a certificate of occupancy. Rather than cancel or adjourn the closing, Ms. Amador and seller agreed that \$25,000 of the purchase price would be held in escrow until seller obtained the certificate of occupancy. She next alleged that the certificate of occupancy was never tendered and the \$25,000 was not segregated and held in escrow. She sued the seller and her lender (who was to fund and act as the escrow agent). The seller, however, was a corporation whose only asset had been the house it sold. Ms. Amador therefore also sued the corporation's owner, Darren Wainer, who retained Miller Law to defend him.

### **He Said ...**

We moved to dismiss the complaint against Mr. Wainer, arguing that the law views a corporation as a "person" that is separate and apart from its owner. For the purposes of the motion, we conceded that Mr. Wainer was the "puppet master" who pulled the strings of the corporation. Still, any promises he made (and broke) were done purely in his 'corporate capacity'. Simply put, Wainer is not the alter ego of the corporate seller. Indeed, corporations are creatures of statute, created by society precisely to limit the liability of the people who own them.

### **The Court Said ...**

In her May 4, 2020 decision, Judge Carolyn E. Wade accepted our legal analysis that Mr. Wainer could only be held liable for the (alleged) wrongs of his corporation if Ms. Amador also satisfactorily alleged that Mr. Wainer wrongfully "abused the privilege of doing business in the corporate form". Courts have fine-tuned this broad principle to include such acts as failing to adhere to corporate formalities or using corporate funds for personal use. In other words, the less a person respects the difference between him and his corporation, the less a Court will respect those differences.

Allowing a case to proceed against the owner of a corporation (for the wrongs by his corporation) is called "piercing the corporate veil". While it may be emotionally satisfying to hold the owner responsible, it is generally disfavored because it undercuts the very purpose of corporations and weakens the engine that drives the economy.

After reviewing the pleadings, exhibits, and legal arguments, Judge Wade concluded that Ms. Amador failed to allege that Mr. Wainer acted improperly regarding his corporation. She therefore dismissed the complaint as against him, holding that "[w]ithout any allegation that Wainer's conduct constituted an abuse of the privilege of doing business in the corporate form, the Complaint lacks a requisite element to support a cause of action against him under the theory of piercing the corporate veil."

The lender also made a motion to dismiss which was granted, leaving just the corporation to defend the law suit. Whether the corporate seller did anything wrong remains to be seen but Darren Wainer cannot be held personally liable since there is no indication that he improperly managed the company.

### **We Say ...**

Courts are not inclined to protect an owner of a business whose corporation is merely a façade or an instrument used by the owner to commit wrongdoing. There is no complete list of "no-no's that triggers a piercing of the veil, but there are guiding principles, such as those used by Judge Wade to dismiss the case against Mr. Wainer. Some examples of specific wrongs include:

- Paying personal bills from corporate checking accounts;
- Undercapitalizing the corporation;
- Failing to maintain separate identities of the company and its owners;
- Failing to follow corporate formalities that would evidence the owner's intention to treat the corporation as a separate legal entity; or
- Committing fraud.

We like to think of a corporation and its owner like a ventriloquist show. Everyone knows that the dummy is not real. Still, so long as the audience is allowed to believe that the dummy spoke of his own volition, his human partner (in crime) will escape unscathed. Owners of businesses should likewise act like they and their corporations are not one and the same.

We suggest that owners keep in mind that their audience will be a judge and/or jury, who will not be in a laughing mood. Therefore, try not to let them see your lips move.