Piercing the Corporate Veil: *Elements*

Corporations exist for the express purpose of escaping personal liability… but not to the point of fraud or injustice.

**Two Core Elements:**

1. The owner exercised complete domination over the corporation and

2. Such domination was used to commit a fraud or wrong that injured the party seeking to pierce
Proto-Typical Veil Piercing Case:

Ventresca Realty Co. v. Houlihan Realty Corp.

• Two individual defendants, Houlihan and Parnes set up a dummy Houlihan Parnes Corp. for the sole purpose of signing a lease with plaintiff landlord.

• Houlihan and Parnes, principals of the corporation, then took up occupancy of the leasehold and pursued purely personal interests and business on behalf of another real estate venture, Houlihan Parnes Realtors.

• After Houlihan and Parnes abruptly vacated, leaving six years on lease, the landlord sued and won a meaningless judgment against Houlihan Parnes Corp.

• Appellate Division held that Houlihan Parnes Corp. was a shell corporation which never held funds except to pay the monthly rent bill.
Proto-Typical Veil Piercing Case:

Ventresca Realty Co. v. Houlihan Realty Corp.

Compelling Facts:

- No assets
- No employees
- No investments
- No phone line
- No investment
- No income
- No regular meetings
- No elections of directors & offices
Proto-Typical Veil Piercing Case:

Ventresca Realty Co. v. Houlihan Realty Corp.

**Conclusion:**
The individual defendants completely dominated and controlled the corporation and abused its corporate form to advance personal interests. This abuse led to a wrong injuring plaintiff.

**Morale:**
Courts in equity are uncomfortable with plaintiffs left without remedy. Though shell corporations are ubiquitous, courts will reach behind the veil in instances of abuse to aid otherwise helpless plaintiffs.
Piercing the Corporate Veil: *Complete Domination*

**Complete Domination:** Factors to be considered when determining whether a corporation has been dominated include:

1. The absence of formalities attendant to corporate existence;
2. Inadequate capitalization;
3. Whether funds are put in and removed for personal rather than corporate purposes; and
4. The amount of business discretion displayed by the allegedly dominated corporation.
Piercing the Corporate Veil: *Domination to Perpetrate a Wrong*

- New York Law will not allow the corporate veil to be pierced absent a showing that defendant’s domination was used to commit fraud or another wrong.
  - This is a fact-specific inquiry that involves numerous well-trodden factors.
- Money diversion to render a corporation judgment-proof always constitutes a wrong for the purposes of determining whether the veil should be pierced.
Courts frequently consider the following factors when determining whether an equitable veil piercing is appropriate:

1. The absence of formalities, books, records;
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;
6. The amount of business discretion displayed by the dominated corporation;
7. Whether the related entity deals with the dominated corporation at arm’s length;
8. Whether the entities are treated as independent profit centers;
9. The payment or guarantee of debts of the dominated corporation; and
10. Whether the corporation in question had property that was used by the other entity as if it were its own.

At its core, this is a smell test. And remember, “equity will not suffer a wrong to be without a remedy.”
Reverse Piercing: *A Growing Trend*

Where the individual is the judgment debtor and the assets of the corporation are used to satisfy the judgment. Think of a forced sale of corporate assets.

- A much rarer breed, but becoming increasingly popular, reverse veil-piercing imposes liability on the corporation for the judgment against the individual.

- Employs the same two-prong analysis as in traditional veil-piercing, but adds an additional step to ensure that innocent shareholders are not injured.

- Because of risk of inartfully applied reverse veil-piercing (harming non-culpable shareholders), some states do not permit reverse veil-piercing.

- **State of New York v. Easton**
  
  169 Misc. 2D 282 (Sup. Ct. Albany Co. 1995)

  - Judgment personally against medical fraudster can be satisfied against companies owned by his sons used to launder and conceal ill-gotten gains.