

Case Law: Corporate "Veil" of Statutory Close Corporation Is Pierced

The S.C. Court of Appeals recently pierced the corporate veil of a South Carolina statutory close corporation.

In *Hunting v. Elders*, 359 S.C. 217, 597 S.E.2d 803 (Ct. App. 2004), the court affirmed the trial court's finding of liability for personal injuries suffered by the plaintiff from a drunk driver. The jury awarded \$1.5 million in actual damages against the driver and Elmyer Enterprises, the owner and operator of the bar that served the driver. Additionally, the jury assessed punitive damages of \$3,000 against the driver and \$25,000 against the company.

The issue on appeal was whether to pierce the corporate veil and hold the dominant shareholder, Elders, liable as alter ego to the company. The trial court found the evidence indicated Elmyer Enterprises was merely a façade for Elders; thus, the plaintiff met her burden of proof necessary to pierce the veil.

In affirming the trial court's decision, the Court of Appeals applied the eight factors traditionally used in piercing cases. The court recognized that the advent of the statutory close corporation and option of electing S-corporation status under federal tax laws impacts the significance of several of the factors. But it also ruled that the trial court's conclusion that the corporation was a mere façade for the benefit of Elders was justified based on:

- Inadequate business records for Elmyer Enterprises;
- Inactivity of its other corporate officers;
- Substantial siphoning and commingling of funds; and
- Gross undercapitalization of Elmyer

Beyond that, the court found that unfairness or injustice would result if Elders was not held responsible for the acts of Elmyer. Thus, Elders was held individually liable for the judgment against Elmyer and for the post-judgment interest attributable to the corporation.

Legislation: Big – and Positive – Changes to S.C. Corporate Law

With the enactment of H.4650, the South Carolina legislature made some sweeping changes to the corporate law of South Carolina. The legislation is designed to strengthen South Carolina's ability to attract and retain businesses.

Signed into law by Governor Sanford on April 29, 2004, the bill allows domestications, mergers, and conversions of corporate entities. It also makes welcome changes for limited liability companies operating under S.C. law and includes other minor technical changes aimed at cleaning up the corporate code.

Here is a brief look at the key provisions of the new law:

Domestication. The legislation permits existing corporations organized under the laws of other states to become South Carolina corporations. The statute requires a filing to be made in each state.

Conversions and Mergers. The bill provides procedures for, and the legal effects of, mergers and conversions between corporations, limited liability companies, partnerships, and limited partnerships. A conversion is a change by an entity from one form of organization to another. A merger is the combination of two or more entities into one surviving entity. To reflect the new name of the entity, affidavits are filed in counties where the entity owns real property.

LLCs. The legislation makes numerous substantive and technical changes to the LLC Act. Importantly, the legislation repeals the statute requiring LLCs to file annual reports. Another welcome amendment eliminates the ambiguity over whether provisions requiring at-will companies to purchase a member's interest upon dissociation were waivable. The new change clarifies that this requirement may be modified in the operating agreement.

This Corporate Law Update is published as a service to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. If you would like to receive more detailed information about the subjects covered, please contact any of the attorneys listed below.

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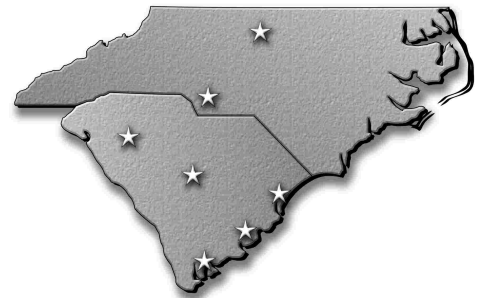
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