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Owner of Pennsylvania Limited Liability Company Liable for Its Debts Under Alter Ego Theory

Kitchin Associates LLC is a Pennsylvania limited liability company that is no longer in business. Richard Kitchin and his son were the members of Kitchin LLC and each held a 50% ownership interest in the entity. In a bankruptcy court proceeding, the Joan I. Glisson Trust asserted a claim against Mr. Kitchin in the amount of $257,047.63, arising from an unsatisfied mortgage loan to Kitchin LLC, the proceeds of which were used to purchase a property in Pennsylvania. Mr. Kitchin was not a party to the loan transaction, but did execute the loan documents in his capacity as a member of Kitchin LLC. The Trust asserted that Mr. Kitchin should be personally liable for Kitchin LLC's loan, asserting that the corporate veil should be pierced because he directly participated in the company's torts and because he was subject to personal liability under an alter ego theory.

The Bankruptcy Court for the Eastern District of Pennsylvania found that the Trust's attempt to pierce the corporate veil based on Mr. Kitchin's alleged participation in the torts of the company failed as a matter of law because the Trust's claims against Kitchin LLC sounded in contract, not tort. However, applying the equitable remedy of alter ego liability, the court held that the corporate veil should be pierced because the Trust had demonstrated that Mr. Kitchin controlled the company and that injustice would result if the corporate fiction was maintained, the two elements necessary to pierce the corporate veil under Pennsylvania law.

First, the court found that Mr. Kitchin exercised sufficient control over Kitchin LLC to impose alter ego liability because he directed the company to engage in the transactions that depleted the company's assets. In particular, as confirmed by his son, Mr. Kitchin directed that the company transfer money from Kitchin LLC to pay the debts of another company he controlled. In addition, the court held that the second element necessary for alter ego liability was also present because Mr. Kitchin, "along with his son, disregarded the corporate form and acted as though the assets of Kitchin LLC were theirs to manage and distribute without regard to its creditors." As a result, it held that the corporate veil could be pierced to hold Mr. Kitchin liable for the debts of the company. (*In re Richard R. Kitchin, Jr. and Donna Kitchin*, No. 09-17891-MDC (Bankr. E.D. Pa. Nov. 9, 2010))

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