

TO: Public
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PIERCING THE CORPORATE VEIL IN FLORIDA

One of the principle advantages to incorporating¹ your business is liability protection. The purpose of this memorandum is to highlight certain limitations to that protection.

In the aftermath of recent scandals (e.g. Enron, Anderson Consulting), the law has shifted somewhat to make it easier for plaintiffs to “pierce the corporate veil.” That term, also known as “disregarding the corporate fiction,” refers to the situation where the court allows the plaintiff to reach the personal assets of the defendant owner(s) rather than limiting the plaintiff to recourse against the corporate assets. Similarly, under the same principle, it may also be possible for plaintiffs to reach the assets of other corporations belonging to the defendant owner.

In Florida, courts require a showing of three factors in order to pierce the corporate veil:^[1]

- 1) The corporation was dominated and controlled by its shareholder(s) in such as way that it was merely an “alter ego” used for the shareholders’ benefit,^[2]
- 2) Some sort of improper conduct in either the formation or the use of the corporate form,^[3] and
- 3) The improper conduct imposed an injury on the claimant.

Districts in South Florida tend to focus on the second element: “A critical issue in determination of whether the corporate veil will be pierced for imposition of personal liability is whether corporate entity was organized or operated for an improper or fraudulent purpose.”^[4]

The question then is what constitutes such misconduct. Misconduct may be found where the corporate identity is used __

- 1) to defraud creditors,

¹ The same protection entails under certain other business forms as well, (i.e. limited liability company).

^[1] 8 Fla. Jur 2d Business Relationships §13 (2006); *Mullin v. Dzikowski*, 257 BR 356 (SD Fla. 2000); *Dania Jai-Alai Palace, Inc. v. Sykes*, 450 So. 2d 1114 (Fla. 1984); *Seminole Boatyard, inc. v. Christoph*, 715 So. 2d 987 (1998).

^[2] For example, where the owner commingles his money with the corporation’s money, or the owner uses corporate property for private purposes. Basically, any evidence that the owner does not respect the corporation as a separate entity could be used to meet the “alter ego” element.

^[3] *Dania Jai-Alai Palace*, 450 So. 2d 1114; *Hilton Oil Transp. v. Oil Transp. Co., S.A.*, 659 So. 2d 1141, 1151 (Fla. 3d DCA 1995); *Ally v. Naim*, 581 So. 2d 961, 962 (Fla. 3d DCA 1991).

^[4] *Kanov v. Bitz*, 660 So. 2d 1165 (3d DCA 1995)

- 2) to evade existing obligations,^[5]
- 3) to achieve a perpetual monopoly, or
- 4) to protect knavery or crime^[6].
- 5) where the owner commits an illegal act as an individual rather than by formal corporate action.^[7]
- 6) where property is used interchangeably without regard to corporate identity.^[8]

The good news for owners is that Florida is a conservative state and courts here are reluctant to pierce the corporate veil. Exceptions will usually only be made where the plaintiff successfully shows the corporation is formed or used for some illegal, fraudulent, or other unjust purpose.^[9]

^[5] Undercapitalization of the business and/or failing to maintain liability insurance to cover damages resulting from the company's negligence or intentional wrongdoing are traditionally looked at to determine these first two elements.

^[6] Examples come from Wormser's "Disregard of the Corporate Fiction," which the Court quotes approvingly.

^[7] 459 So. 2d at 1119.

^[8] 459 So. 2d at 1118.

^[9] 8 Fla. Jur 2d Business Relationships §13 (2006); *Dania Jai-Alai Palace*, 450 So. 2d 1114.