

Corporate & Financial Weekly Digest

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New York District Court Denies Motion to Dismiss in Corporate Veil Piercing Suit Brought Under Delaware Law

In a consolidated suit in the U.S. District Court for the Southern District of New York relating to litigations concerning aircraft leases spanning over eight years that touched federal, state and bankruptcy courts, the plaintiffs sought to pierce the corporate veil of C-S Aviation, an aircraft leasing company, and hold the defendants, controlling shareholders George Soros and another individual investor liable on a default judgment entered against C-S Aviation in a North Carolina fraud suit. The plaintiffs alleged that any profits C-S Aviation made were transferred to the defendants, that C-S Aviation was at all relevant times undercapitalized, and that those operating C-S Aviation regularly disregarded its status as an entity separate from those controlled by the defendants. As a consequence, according to the plaintiffs, C-S Aviation was merely an alter ego of the defendants. The defendants moved to dismiss the suit, arguing that the plaintiffs had not sufficiently plead the elements required to prevail on an alter-ego veil piercing claim.

The District Court rejected the defendants' motion, ruling that the plaintiffs had met their pleading burden. Under the Delaware law that controlled in this case, to prevail on an alter-ego veil piercing claim, the plaintiffs must establish (1) that C-S Aviation and its controlling shareholders, in this case the defendants, operated as a "single economic entity"; and (2) that an overall element of injustice or fairness is present. With respect to the first element, the Court rejected the argument that abuse of the corporate structure for personal benefit was required. The plaintiffs' allegations of the defendants' disregard of corporate formalities and comingling of corporate funds were sufficient to suggest a "single economic entity," regardless of the ultimate purpose of the corporate abuse. With respect to the second element, the Court explained that either fraud or injustice must be alleged, but fraud required to justify veil piercing must be distinct from the wrong underlying the original complaint. The Court, however, held that the plaintiffs' met the unfairness element of the alter ego theory because they pled that the defendants had siphoned funds from C-S Aviation and left it undercapitalized. Having found that the plaintiffs had met the pleading requirements of an alter ego piercing the veil claim, the District Court denied the defendants' motion to dismiss.

Tradewinds Airlines, Inc., et. al.. v. Soros, et. al., Nos. 08 Civ. 5901 (FK), 10 Civ. 8175(JFK), 2012 WL 983575 (S.D.N.Y. Mar. 22, 2012).

Katten Muchin Rosenman LLP
Charlotte Chicago Irving London Los Angeles New York Washington, DC