Another successful veil piercing against non-U.S. national for U.S. judgment

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We have posted recently on the New York law on piercing the corporate veil, since New York law continues to be the central law one sees in international litigations in the U.S., and veil piercing could be expected to be a particularly challenging and important issue in connection with non-U.S. nationals or entities. See for example, our discussion of false conflicts in the context of a veil piercing proceeding, and our treatment of whether veil piercing was the correct procedure to enforce an arbitral award (it was, but the claim lost on the merits).

In another ruling, the Southern District of New York decided the case styled *Ridge Clearing & Outsourcing Solutions, Inc. v. Khashoggi*, 07 Civ. 6611(RJH)(S.D.N.Y. 2011), the Court articulated and applied New York's veil piercing against Adnan Khashoggi, a national of the Kingdom of Saudi Arabia, in the context of claims for stock purchase and delivery transactions gone awry. The decision is post-trial; the plaintiffs in the case evidently understood that the chances of an appellate reversal were diminished insofar as the District Court made post-trial findings of fact and conclusions of law, rather than rulings on summary judgment.

The entity at issue is Ultimate Holdings, Inc., formed by one Ramy El-Batrawi. The proof at trial was that El-Batrawi formed the entity for the purpose of conducting business for Khashoggi. El-Batrawi did not contribute any capital to Ultimate, and even though Khashoggi did not appear to pay any role in capitalizing the corporation either, the District Court found that the purpose of the company was to make money for Khashoggi. Ultimately Khashoggi owned the entity and "had the right to direct its activities", even though Khashoggi made a broad delegation of power to El-Batrawi.

The Court stated:

In determining whether an individual has dominated and controlled a corporation, New York courts consider a number of factors, including (1) disregard of corporate formalities; (2) inadequate capitalization; (3) intermingling of funds; (4) overlap in ownership, officers, directors, and personnel; (5) common office space, address and telephone numbers of corporate entities; (6) the degree of discretion shown by the allegedly dominated corporation; (7) whether the dealings between the entities are at arms length; (8) whether the corporations are treated as independent profit centers; (9) payment or guarantee of the corporation's debts by the dominating entity, and (10) intermingling of property between the entities.

The Court also articulated the controlling law that the domination exercised over the corporation “was used to commit a fraud or wrong that injured the party seeing to pierce the veil”.

Based on the evidence at trial, the Court found that these factors compelled a conclusion that the veil should be pierced. Chief among the factors deemed pertinent by the Court was the absence of adequate capitalization, which the Court used both to show domination and use to commit wrongful act.

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