

Top NY Court Affirms High Bar For Piercing Corporate Veil

By **Pete Brush**

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Law360, New York (November 29, 2012, 6:58 PM ET) -- New York's highest court on Thursday backed a legal standard that makes it difficult for plaintiffs to hold individuals liable for alleged corporate abuses, nixing a personal injury plaintiff's bid to recover damages from two property owners in a ruling experts say should protect businesses statewide.

The unanimous New York State Court of Appeals agreed with a lower appellate court, the First Department of the Supreme Court of New York's Appellate Division, which in 2011 turned aside plaintiff Atara James' effort to pierce the corporate veil of Loran Realty V Corp.

James appealed after losing on her veil-piercing claim in a 2009 Bronx County Supreme Court bench trial. She sued in 2002 on behalf of her infant daughter Kayla, seeking to win damages for lead-paint injuries from real estate investor Frank Palazzolo, as well as from former Loran Realty V owner Carmine Donadio.

Thursday's decision beat back James' challenge to a widely cited 1993 precedent, *Morris v. New York State Department of Taxation and Finance*, which holds that a plaintiff must show an individual "abused the privilege of doing business ... to perpetrate a wrong or injustice."

Like the First Department, the Court of Appeals said James bore that burden of proof and didn't clear the hurdle of showing specific intent.

"Plaintiffs ... failed to produce evidence that the individual defendants took steps to render the corporate defendant insolvent in order to avoid plaintiffs' claim for damages or otherwise defraud plaintiffs," the Court of Appeals wrote.

The appeal was a "tough road," according to Scarsdale, N.Y.-based attorney Lawrence Gottlieb of Hass & Gottlieb, who represents Palazzolo.

"What they tried to do in the Court of Appeals was to overturn a long-standing precedent, which holds that in order to pierce the corporate veil you need to show that a person not only denuded a corporation of its assets but also did so to prevent a plaintiff from collecting," Gottlieb said.

The decision should come as a relief to businesses across the Empire State, according to Melville, N.Y.-based commercial litigation defense attorney Leo K. Barnes Jr. of Barnes & Barnes PC.

"Thankfully, from the defense perspective, the courts rarely go as far as to pierce," Barnes said. "Business owners are advised to incorporate for this purpose."

Under the *Morris* precedent not only must a plaintiff show that an individual defendant dominated a corporate transaction — such as a move to strip a company of its assets — they must also show that such domination was used to commit a fraud, according to Barnes.

In any closely held business the shareholders will almost always "dominate and control" transactions, Barnes pointed out, making that part of the standard easy to clear.

But it's far more difficult to show that the shareholders of the corporate defendant intentionally depleted corporate assets to render the corporate defendant judgment proof, Barnes said.

"The fraud or injustice element of the claim is often the turning point," Barnes said.

The attorney who sought to overturn the *Morris* precedent, Brian J. Shoot of [Sullivan Papain Block McGrath & Cannavo PC](#), had a different take, saying that "sham corporations" currently enjoy protection under the law that is too strong for legitimate plaintiffs to overcome.

It was not difficult to show that Loran Realty V had no assets, Shoot said, but it was a virtual impossibility to prove that the two individual defendants stripped it of assets it solely to dodge the plaintiffs' claims.

With courts having refused to relax the standard, New York's legislature should consider taking action to protect plaintiffs injured by corporations in similar ways, Shoot said, noting that the lower appellate court conceded Loran Realty V was a "judgment-proof shell."

"The substantial corporations of this world — the IBMs, the Verizons — they don't have a dog in the fight, so to speak," Shoot said. "They're not undercapitalized. It's another class of defendant we're talking about."

While the James case dealt with lead paint injury, Shoot said many similar cases involve New York's taxi cab companies, which are formed with such protections in mind.

"Cab companies have no idea who a cab might run over," he said. "The corporations are set up to stop anyone who might want to pursue a claim beyond the corporate veil."

The James plaintiffs also have a lead paint liability claim pending against the defendants but, without the ability to recover from either Palazzolo or Donadio directly it was unclear what the prospects of that part of the case would be. The liability claim was bifurcated from the corporate veil claim for purposes of trial. No trial has been set related to the other claim, still pending in Bronx County Supreme Court.

The plaintiffs are represented before the trial court by Gregory J. Cannata of Gregory J. Cannata & Associates. They are represented before the appellate court by Sullivan Papain Block McGrath & Cannavo PC.

Palazzolo is represented by Hass & Gottlieb.

Donadio is represented by attorney Daniel G. Heyman.

The appeal is *James et al. v. Loran et al.*, case number 237, in the New York State Court of Appeals.

--Editing by John Quinn and Katherine Rautenberg.



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