

DIRT DAILY DEVELOPMENT for September 25, 2012, 9:17 AM

I saw this interesting case in the Stoel Rives Newsletter. *Roger Bernhardt*

Veil piercing claim is not supported by property transfers between Georgia LLC and its members

- [Stoel Rives LLP](#)
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A claimant against a Georgia limited liability company can pierce the veil and assert its claim against the LLC's members if the members have sufficiently disregarded the LLC's separate existence and there is some degree of injustice, fraud, or wrongdoing. The Georgia Court of Appeals recently held that a series of real estate and cash transfers back and forth between an LLC and its members did not show enough disregard of the LLC as a separate entity to pierce the veil. [Sun Nurseries, Inc. v. Lake Erma, LLC](#), 730 S.E.2d 556 (Ga. Ct. App. July 12, 2012).

The case involved a dispute over payment for landscaping services rendered by the plaintiff to a golf course owned and managed by two LLCs. The principal claim was for breach of an oral contract for the services, but additional claims for quantum meruit, fraud, attorneys' fees and conversion were also raised. The two LLCs did not contest the claims and the plaintiff added the LLCs' members to its complaint, presumably to increase the collectability of the judgment it hoped to obtain.

The trial court ruled in favor of the LLCs' members on all of the plaintiff's claims, and in favor of the LLCs on the fraud and conversion claims. The jury returned a verdict for the plaintiff on its remaining claims against the two LLCs. *Id.* at 560-61. The plaintiff appealed the dismissal of the fraud and conversion claims and the claims against the members.

The Court of Appeal's discussion of the fraud, fraudulent transfer, and conversion claims is unremarkable, and I will pass on to its veil-piercing analysis. The court began by considering whether the defendants had disregarded the separate existence of the LLCs as legal entities. *Id.* at 564-65. The plaintiff claimed that a transaction involving a series of property transfers, loans and cash transfers showed disregard of the separateness of the entities.

In the transaction at issue, one of the two LLCs transferred 93 real estate lots to two of its members, who then used the lots as collateral and borrowed \$5.2 million from a local bank. The members then transferred the loan proceeds to the LLC, and quitclaimed the lots to the LLC. One of the members testified that he and the other member determined that it was "simpler" to obtain the loans themselves rather than having the LLC borrow the funds directly. *Id.* at 560. This is puzzling, because with this approach the two members were personally liable to the bank on the loans. A loan to the LLC would have shielded the members from personal liability.

The standard used by the court for disregard of the corporate entity was that "[t]he plaintiff must show that the defendant disregarded the separateness of legal entities by commingling on an interchangeable

or joint basis or confusing the otherwise separate properties, records or control." *Id.* at 564 (quoting *Christopher v. Sinyard*, 723 S.E.2d 78, 80 (Ga. Ct. App. 2012)). The court pointed out that:

- the transfers of property to the LLC members were to facilitate a loan for the benefit of the LLC,
- the loan proceeds and the real estate lots were returned immediately to the LLC,
- the members did not make personal use of the loan proceeds,
- the cash flow generated by the loans apparently allowed the LLC to continue operating, and
- the transaction was properly reflected on the LLC's books and in the public record.

Id. at 565. The court said that on these facts, the transfers and loans did not represent an abuse of the corporate form. *Id.* The fact that the loan proceeds "may have been used to replenish the company coffers after the 2005 distributions, and thus may have indirectly benefitted the members' own ends along with the [LLC's], does not in and of itself constitute abuse of the corporate form." *Id.*

The court concluded that the loan and property transfers were insufficient to evidence a disregard by the members of the LLC's separate identity, and affirmed the trial court's ruling against the veil-piercing claim. *Id.*

The result here is not surprising, but I can see why the plaintiff thought that there was some disregard of the entity nature of the LLC. The back-and-forth property transfers don't appear economically justifiable, because the result leaves the two members with personal liability for the loans. A conventional loan taken out directly by the LLC would have shielded them from personal liability if the LLC defaulted. Plaintiffs tend to bore in when defendants take inexplicable actions such as these loans by the members.

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