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Piercing the Corporate Veil for Ship Arrests and Maritime Attachments in the United States[1]

By

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When someone, even a corporation, sets up a dummy corporation just to avoid personal liability and goes on doing business the same way they did before, a maritime court may "pierce the corporate veil" and find the individuals or corporations involved are "alter egos" of the paper corporation and hold them personally liable for breach of contract, although the contract is signed only for the dummy corporation.

The corporate form may be disregarded when the legal entity has been used to achieve fraud or when the corporation is so dominated that it is merely an alter ego of another. The need to protect the corporate form is weighed against the competing need to protect creditors from unscrupulous conduct.

The complexity of commercial maritime transactions, which often involve many different parties and relations among the parties, means that the plaintiff may not be sure whom to hold responsible for his loss. Sometimes this confusion is by design. Unscrupulous defendants attempt to defraud the plaintiff and escape liability by setting up sham corporations. In these situations, plaintiffs facing networks of related corporate entities can feel that they are playing a shell game. To stop this from happening, maritime law allows plaintiffs to pierce the corporate veil in some situations. Piercing the corporate veil means that a court disregards the corporate form, in the interest of fairness, to hold shareholders directly liable for claims against the corporation.

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One theory for piercing the veil is the alter ego doctrine, which imposes liability when a corporation has no separate identity and exists only as the "mere instrumentality" of another entity. Although veil piercing developed as an equitable doctrine under state corporate law, in the past few decades, a federal common law of veil piercing has emerged to apply to matters of federal importance.

How the issue typically arises in the maritime context

In arresting a vessel under Rule C, a Plaintiff need not pierce the corporate veil because the Rule C action is in rem against the vessel. There is no associated or sister ship arrest regime in the US under Rule C[4], which provides for in rem jurisdiction only over the vessel or other property subject to the lien. However, other property of a defendant, including other vessels owned by the same defendant, may be attached in a proper circumstance under Rule B because quasi in rem jurisdiction under Rule B is a form of personal jurisdiction over the defendant.

In a Rule B attachment action, the corporate veil may be pierced. Although there are no mandatory requirements, the U.S. Courts consider various factors in determining whether the corporate veil may be pierced, including: disregard of corporate formalities; inadequate capitalization; intermingling of funds; overlap in ownership, officers, directors, and personnel; common office space, address & telephone numbers of corporate entities; the degree of discretion shown by the allegedly dominated corporation; whether the dealings between the entities are at arm's length; whether the corporations are treated as independent profit centers; payment or guarantee of the corporation's debt by the dominating entity; and intermingling of property between entities.

Warning, note that different jurisdictions in the United States apply Rule B differently, in that, there is a significant variance in the veil piercing standards applied by the various Circuits. For example, courts within the Second Circuit in New York and Connecticut apply Rule B differently from courts within the Eleventh Circuit in Florida, Georgia and other Southern States. In the Fifth Circuit, the rule is applied when the person or parent company exercised complete domination over the corporation with respect to the transaction at issue, and such domination was used to commit a fraud or wrong that injured the party seeking to pierce the veil. In the Second Circuit, it seems, that committing a 'wrong' alone is enough. Ultimately, in all

[4] Sister ship arrest is a presumptive veil-piercing of companies that own vessels that are all part of the same fleet.

jurisdictions the corporate veil will be pierced if upholding the corporate separateness would work out injustice and produce inequitable results.

The Second Circuit Court of Appeals enumerated ten factors that are considered as indicators of domination of the defendant (corporation) by its alter ego. The Fifth Circuit has enumerated 12 factors. However, there is no set rule as to how many of these factors must be present to warrant piercing the corporate veil, and the courts have considered additional factors as well.

General American Thoughts

When courts 'pierce the corporate veil', they disregard the separateness of the corporation and hold a shareholder responsible for the corporation's action as if it were the shareholder's own. Although as a rule the courts are reluctant to allow corporate veil piercing, creditors of an insolvent corporation frequently attempt to hold the shareholders liable when they cannot obtain satisfaction from their debtor. In the United States, in fact, piercing claims constitute the single most litigated area in corporate law.

This presentation will clear up some of the mist hanging around the concept of corporate veil piercing. What exactly is corporate veil piercing and in which situations does it occur? What are the legal rules involved?

An analysis from a functional comparative perspective, starting from situations that typically call for shareholder liability for the debts of subsidiary companies. Among the grounds for veil piercing claims the article discusses the following, along with the substantive and procedural law and important cases:

• undercapitalization;
• asset stripping;
• undue continuing of loss-making activities;
• and identification or the consideration of the corporate group as an economic unit.

This doctrine, also called "disregarding [the] corporate entity," allows U.S. courts to overlook the corporate shield that protects shareholders from lawsuits against the corporation and to hold the shareholders personally liable for claims against the corporation. The veil piercing theory is indisputably a common law theory applied in most U.S. jurisdictions. As an equitable remedy, it allows plaintiffs to recover directly from shareholders of defendant corporations who would otherwise enjoy the benefit of limited liability. What makes this doctrine unique among other equitable remedies in U.S. law is the high degree of attention that it has received during the last century. In fact, piercing the corporate veil has been identified as "the most litigated issue in [United States] corporate law."

Despite the frequency with which the doctrine is litigated, there is no clear-cut presentation of its essential aspects in U.S. law that can serve as an absolute point of reference for comparative law purposes. There is somewhat of a consensus among legal scholars that this theory is one of the more confusing doctrines in corporate law, stemming from its overall unpredictability. Even the exact definition of the phrase "lifting the veil . . . varies from case to case depending upon the rationale offered for ignoring the legal separateness of the entities." It is generally accepted that "it is difficult to predict how a court will rule" in a veil piercing case.

Application in Maritime Situations

Although a creature of corporation law and equity, the United States Supreme Court approved veil piercing in the maritime context in *Swift & Co. Packers v. Compania Colombiana Del Caribe, S.A.*[5] In Swift, an American shipper sued a Colombian carrier for failing to deliver a cargo of rice from Ecuador to Cuba and attached a vessel owned by the carrier. The shipper then amended its complaint to include another Colombian company, which had recently been formed by the carrier's members, and to which, the shipper alleged, the attached vessel had been fraudulently conveyed. The shipper alleged that the new company received the vessel for no consideration and promptly changed the vessel's name. The district court vacated the attachment because it held that admiralty jurisdiction did not extend to the shipper's equitable alter-ego claim, and the circuit court affirmed. The Supreme Court reversed and held that federal admiralty jurisdiction encompasses subsidiary equitable claims based on an underlying maritime transaction, noting, "The jurisdiction of a court of admiralty to determine the question of alter ego is undoubted." Thus, the Supreme Court recognized that admiralty jurisdiction extends to claims to pierce the corporate veil, such as alter-ego claims.

Then what is the federal common law? Subsequent cases have concluded that there is no uniform standard test under federal common law for determining whether an

[5] 339 U.S. 684, 1950 AMC 1089 (1950).

alter ego relationship exists, and courts must instead look to the totality of the circumstances[6].

Choice of Law Problems

Plaintiffs in admiralty often confront difficult choice-of-law problems. Maritime transactions often involve multiple legal systems, and disputes arising from these transactions raise questions about which law applies. In many cases the choice of law can affect the outcome, and therefore choice-of-law issues are heavily litigated.

In Lauritzen v. Larsen, the Supreme Court outlined a general approach to maritime choice of law.[7] Lauritzen involved a Danish seaman who sought damages under the Jones Act from his Danish employer. The seaman signed on in New York and brought his claim in the United States, but the vessel was Danish-flagged and the seaman's employment contract had a Danish choice-of-law clause. Therefore, because the transaction's contacts with Denmark outweighed its contacts with the United States, the Supreme Court denied Jones Act coverage and limited the seaman to remedies under Danish law. The Lauritzen Court listed seven factors for courts to weigh in the choice-of-law analysis: the place of the wrongful act, the law of the flag, the allegiance or domicile of the injured person, the allegiance of the defendant shipowner, the place of contract, the inaccessibility of a foreign forum, and the law of the forum.29 In Hellenic Lines Ltd. v. Rhoditis, the Supreme Court added an eighth factor: the shipowner's base of operations.[8] Although the Lauritzen–Rhoditis factors grew out of seamen's claims, they have been adapted to a variety of situations in maritime law.

Under Maritime Choice-Of-Law Principles, What Law Applies To Piercing Or Alter-Ego Claims

Maritime circuit level courts have held that under controlling maritime choice-of-law principles, federal common law applied to piercing claims. The courts hold that a claim's prime facie validity for attachment purposes depends on the applicable substantive law. Second, the court held that maritime choice-of-law principles determine what substantive law applies to a piercing claim. Finally, the court held that maritime choice-of-law principles supported applying federal common law.

[6] United Steelworkers of Am., AFL-CIO-CLC v. Connors Steel Co., 855 F.2d 1499, 1506 (11th Cir. 1988).
[7] 345 U.S. 571, 1953 AMC 1210 (1953).
[8] 398 U.S. 306, 309, 1970 AMC 994, 996-97 (1970).

Whether a claim sounds in admiralty is a procedural question governed by federal maritime law. Prima facie validity under Rule B is a matter of substantive law. The court reasoned that the only way to measure the legal sufficiency of a claim is by reference to applicable substantive law.

Rule B Attachment and Veil Piercing

Business owners will continue to use incorporation to lawfully limit their personal liability for their businesses' debts and obligations. However, where a corporate entity is so dominated by an individual and the entity is so ignored that it primarily transacts the individual's business instead of its own, it will be called the individual's alter ego and the corporate form will be disregarded to achieve an equitable result.

In the United States, that rule has been applied to limited liability companies as well as traditional corporations. It is not necessary to plead or prove fraud in order to pierce the corporate veil under the alter ego theory. In fact, the courts have ruled that it would be error to instruct a jury that a plaintiff is required to prove fraud to pierce the corporate veil. While a showing of fraud is not necessary, what is required is proof that a corporation is being used by an individual to accomplish his own and not the corporation's business, and that the business owner's control is being used to perpetrate a wrongful or unjust act.

The critical question is whether the corporation is being used as a "shell" by the individual business owner to advance his own purely personal interests at the expense of another party, typically a judgment creditor.

Attachment and veil piercing are powerful tools in the hands of the maritime plaintiff. When a plaintiff uses these tools together, a court must first perform a choice-of-law analysis to determine what substantive law applies to the claim in order to decide whether the plaintiff's maritime claim is facially sufficient.[9]

Although hard to synthesize nationwide, the American trends are that the ambit of the scope of the doctrine is expanded to the extent that it can be unruly, disregarding legal certainty principles and rules of corporate law. These trends show a tendency of the courts for an over-extensive justice and fairness by the application of open-ended concepts of 'control', 'power', 'single economic entity' and 'good faith

[9] Blue Whale, 722 F.3d at 498, 2014 AMC at 158.

principles.' Unless the limits of such concepts are clearly defined, their application can be indiscriminate.

Where a judgment creditor of a corporation is successful in piercing the corporate veil, the proof often includes facts showing that the dominating owner concealed corporate assets and used corporate funds to pay his personal bills and effectively strip the assets of the corporation to enrich himself, while making the corporation judgment proof.

Creditors traditionally pierce the corporate veil to hold a controlling shareholder personally liable for a corporate debt. However, where the business entity and its controlling owner are alter egos, under the Reverse Piercing Doctrine, the piercing flows in the opposite direction and makes the corporation liable for the debt of the individual business owner.

When a court finds that a business entity and its owner are alter egos it concludes that they have a single personality. Therefore, if the required showing is made the direction of the piercing (traditional or reverse) is immaterial.

A plaintiff seeking to invoke the admiralty jurisdiction in United States federal courts, including an attachment under Rule B, must plead a valid prima facie case. Whether the plaintiff will be afforded the special procedures and rules afforded under admiralty jurisdiction depends on whether the claim sounds in admiralty. The law which governs whether a claim sounds in admiralty is governed by federal maritime law. If a claim is determined to sound in admiralty, admiralty jurisdiction and all its rules and procedures apply. To determine the applicable law that governs the underlying claim, a maritime choice-of-law analysis must be conducted. The maritime choice-of-law analysis weighs particular "points of contact" to determine which law has the most significant contacts with the underlying issue. Once the proper controlling law is determined, it is applied to determine whether the plaintiff has properly pled a valid prima facie case.

The applicable substantive law that should apply in a veil piercing or alter ego claim is described in the Second Restatement of Conflict:

The local law of the state of incorporation will be applied to determine the liability to which a person subjects himself by purchasing, or subscribing to, shares of a corporation. This law will likewise be applied to determine whether the shareholder's liability runs to the corporation, or to its creditors, or to both the corporation and its creditors. The local law of the state of incorporation will be applied to determine such issues because (1) this is the law which the shareholders, to the extent that they thought about the question, would usually expect to have applied to determine their liability, (2) exclusive application of this law will assure uniform treatment of shareholders or of classes of shareholders and (3) this state will usually have the dominant interest in the determination of this issue.[10]

When the defendant is a foreign entity, the Second Restatement holds, "[a] state may impose liability upon a shareholder of a foreign corporation for an act done by the corporation in the state, if the state's relationship to the shareholder is sufficient to make reasonable the imposition of such liability upon him."[11]

Although it is true that the purpose of adopting federal common law--maritime or otherwise--is to promote uniformity, this does not preclude the possibility that different circuits may adopt varying interpretations of federal law because the only common binding precedent among each circuit is that of the Supreme Court.

Therefore, because courts in the Fifth Circuit have never drawn a distinction between federal common law and maritime law in the context of veil piercing, it is inappropriate to do so here, regardless of any precedent from the District of Connecticut or the Second Circuit.

The Circuits' unwillingness to develop a uniform rule regarding maritime choice-of-law as it pertains to piercing the corporate veil signifies the need for a Supreme Court ruling.

TAKE-AWAY: Among the many challenges facing maritime plaintiffs is the constant movement of ships, which means that by the time the plaintiff brings his claim, the offending vessel may already be gone, leaving behind no one to answer a claim and no assets to satisfy a judgment.

In the United States Attachment and Veil Piercing are powerful tools in the hands of the maritime plaintiff - seized assets can remain frozen for as long as it takes to resolve the underlying claim.

Creditors wishing to use these tools must establish –

(1) a valid prima facie admiralty claim against the defendant

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[10] RESTATEMENT (SECOND) OF CONFLICT OF LAWS [section] 307 (1971).
[11] RESTATEMENT (SECOND) OF CONFLICT OF LAWS [section] 307 (1971).

(2) perform a choice-of-law analysis to determine what substantive law applies to the claim
(3) determine whether the maritime claim is facially sufficient under that law
(4) determine that the defendant is not jurisdictionally present in the district
(5) determine defendant's alter ego/proxy assets in the district by collecting an aggregation of factors to support piercing or alter ego theory

By establishing facts that tend to show the dominating owner concealing company assets and using company funds to pay owner's bills, effectively stripping away the assets of the company to enrich the owner while making the company judgment proof, the creditor may seize the owner's assets for ultimate recovery.

The lack of concrete standards lends the doctrine to ready use by a marine creditor seeking to apply levers to compel payment from the roaming maritime debtor.

CASES OF NOTE

LIG Insurance Co. Ltd. v. Inter-Florida Container Transport, Inc.

A case decided in 2014 by the 11th Circuit Court of Appeals involved the theft of three sea shipping containers full of computer monitors from a marine storage facility leased by the defendant, Inter-Florida Container Transport, Inc. After a non-jury trial, the District Court found that Inter-Florida was liable for the loss in excess of $500,000, but it also held liable two other defendants, Leonard Diaz and 10997 Project, Inc., who were using Inter-Florida as a front.

The court found that Inter-Florida and 10997 Project shared overlapping directors, and Diaz was 50 percent owner and President of 10997 Project. He also served as director, vice president, secretary and treasurer of Inter-Florida. His wife was the owner and President of Inter-Florida. The two companies ignored formalities, including holding of board meetings, and both companies were grossly undercapitalized.

The Appeals Court listed the factors that courts consider when deciding whether to pierce the corporate veil. These include, among others, (1) common directors and officers between corporations; (2)inadequate capitalization; (3)one corporation's use of another corporation's property and assets as its own; (4) informal intercorporate loan transactions; (5) overlapping decision making between corporations; (6) failure to observe formal legal requirements, and (7) "existence of fraud, wrongdoing or injustice to third parties."

The case is: LIG Insurance Co. Ltd. v. Inter-Florida Container Transport, Inc., 10997 Project, Inc. and Leonel Diaz (11th Cir. May 1, 2014).

Blue Whale Corp. v. Grand China Shipping Development Co.
[cited 35 times]

Blue Whale ties together three important issues in maritime litigation: attachment, veil piercing, and choice of law.

Blue Whale Corporation (Blue Whale) entered into a charterparty with Grand China Shipping Development Company (Grand China), a Chinese company, in May 2011. The charterparty provided that Blue Whale would transport 250,000 metric tons of iron ore from Brazil to China on Blue Whale's Liberian-registered vessel. Blue Whale alleged that Grand China failed to pay the agreed freight and held the vessel and its cargo, pending payment. The carrier further alleged that it suffered more than $1 million in damages as a result. Blue Whale submitted its claim against Grand China to London arbitration according to the charterparty's arbitration clause.

In March 2012, Blue Whale filed a complaint in the United States District Court for the Southern District of New York. As security for its expected arbitration award, Blue Whale sought to attach the property of another Chinese company, HNA Group Company (HNA), which Blue Whale alleged was Grand China's corporate alter ego. The district court issued an order authorizing the attachment of HNA's assets, and HNA moved to vacate the order. The district court held that English law applied because of the charterparty's choice-of-law provision and that Blue Whale's alter-ego claim failed under English law; therefore, the district court vacated the attachment order. Blue Whale appealed.

The United States Court of Appeals for the Second Circuit reversed and held that under maritime choice-of-law principles, federal common law applied to Blue Whale's alter-ego claim. Blue Whale Corp. v. Grand China Shipping Development Co., 722 F.3d 488, 498-500, 2014 AMC 145, 152-61 (2d Cir. 2013).

G.O.America Shipping v China COSCO Shipping

In an unpublished decision, the US Court of Appeals for the Ninth Circuit affirmed the dismissal of an action brought by a vessel owner seeking a maritime writ of attachment against the vessels of another vessel owner. Plaintiff has in a dispute with a Chinese ship repair yard with similar ownership to the defendant. Plaintiff contended that one Chinese company was the alter ego of the other. The appellate court ruled that plaintiff had introduced insufficient evidence to pierce the corporate veil. That court, though, vacated the award of $90,000 as the cost of obtaining a bond to secure release of the attached vessel as such an award is not authorized by federal statute.

The case is:
G.O.America Shipping v China COSCO Shipping, No. 18-35118 (9th Cir., April 11, 2019)
Download a copy at:
http://cdn.ca9.uscourts.gov/datastore/memoranda/2019/04/11/18-35118.pdf.

Eitzen Chemical (Singapore) PTE, Ltd., et al. v. Carib Petroleum, Inc.

Eitzen Chemical A/S, a shipping company and its sister companies, said that in denying their attempt to pierce the corporate veil of a defendant, a "magistrate judge failed to apply the equitable principles called for in maritime cases because it effectively leaves Eitzen without a remedy, as there is no way for it to collect on its judgment." But the U.S. Court of Appeals for the 11th Circuit said while the trial in the lower court involved a breach of contract governed by maritime law "absent some other wrong or injustice that would result if the corporate veil is not pierced, a creditor's inability to collect a judgment alone is insufficient to justify piercing the corporate veil." (See: Eitzen Chemical (Singapore) PTE, Ltd., et al. v. Carib Petroleum, Inc., et al. 11th Circuit. No. 17-14697. Sept. 4.)

Eitzen operated tankers for transporting chemicals around the world. (Eitzen today is part of Team Tankers International Ltd., which has a fleet of 51 chemical tankers. The defendants in the case were Carlos Gamboa and two companies of which he was the individual owner and operator: Carib Petroleum, a Bahamian corporation (Carib-Bahamas), and Carib Petroleum Inc., a Florida corporation (Carib-Florida).
In December 2009, Carib Petroleum (no distinction was made during the chartering process as to whether it was the Bahamian or Florida Carib corporation) entered into

a maritime contract with Eitzen Chemical A/S to have the tanker, Glen, transport 5,000 metric tons of a product described as Tecsol from Venezuela to the Dominican Republic. The court said Tecsol is a solvent or degreaser frequently used as a base for paint.

Discharge of the cargo was delayed in the Dominican Republic and Eitzen incurred additional costs. Carib challenged Eitzen's ability to bring the suit since it did not own the ships, but was the commercial manager. The lower court said Eitzen was the bailee of the Glen and was entitled to pursue the claim.

The following summer, Carib Petroleum entered into a second contract to have an Eitzen-owned tanker, Sichem Challenge, transport Tecsol from Venezuela to the Dominican Republic. Again, the contract did not specify which Carib entity was the charterer.

On June 29, 2010, Sichem Challenge arrived in Puerto Cabello, Venezuela, and began loading the cargo the next morning. On July 2, 2010, the Venezuelan National Guard stopped the loading of the cargo. Samples of the cargo were taken, and the Sichem Challenge was detained under the authority of the Venezuelan prosecutor's office.

A standard contract was used in both instances: a tanker voyage charter party form known as the "Asbatankvoy." The form gets its name from the Association of Ship Brokers & Agents (U.S.A) Inc. The association notes it is "the most-used tanker charter party in the world" and while "designed for chartering of vessels for full cargoes of oil and petroleum products, it is also widely used in the chemical, vegoil and parcel tanker trade."

The authorities gave no reason for the halting of the loading of the cargo on the Sichem Challenge, but the vessel's crew was instructed not to leave the port.

Eitzen retained a correspondent from its protection and indemnity insurer to try to resolve the dispute.

His investigation revealed that the Venezuelan government claimed that tests of the cargo samples indicated that the cargo was not Tecsol but "national diesel fuel." The Venezuelan government had export controls for certain products and the ability to regulate exports, including national diesel fuel.

Venezuela "initiated a smuggling investigation against the exporter, Tecnopetrol, and its principal, Javier Bertucci. As part of its investigation, the government detained the

Sichem Challenge, believing it to be an asset of Bertucci or Tecnopetrol." The trial court had said Tecnopetrol was responsible for obtaining the proper permits for the export of its cargo from Venezuela.

The court said over the next several weeks, Eitzen's P&I representative attempted to convince Venezuelan officials that the Sichem Challenge was not such an asset and petitioned for release of the ship.

The prosecutor in Venezuela eventually ordered that the cargo be discharged, and the cargo was removed from the vessel between Aug. 27 and Sept. 2, 2010. Sichem Challenge left port the following day.

Thereafter, the Eitzen companies initiated a civil suit against Carib-Bahamas, Carib-Florida and Carlos Gamboa, in his individual capacity, for breach of contract based on the delay of unloading the cargo on the Glen and the detention of the Sichem Challenge.

Eitzen claimed in the trial court that both Carib companies owed demurrage under the charter agreements that they had entered into and that they "operated interchangeably and solely by Carlos Gamboa, without keeping any [corporate] form."

In addition, Eitzen sought to hold Carlos Gamboa individually liable by piercing the corporate veil of the Carib defendants.

Eitzen sought demurrage in the amount of $10,659.72, plus interest, costs and attorneys' fees for the breach of contract associated with the delay in unloading the cargo on the Glen and detention damages in the amount of $897,084.19 plus fees and costs for the breach of contract associated with the detention of the Sichem Challenge.

Eitzen also sought to pierce the corporate veil of Carib-Bahamas to hold Carib-Florida and Gamboa, in his individual capacity, liable for the breach of contract as "alter egos" of Carib-Bahamas.

A broker that arranged the charter of the Glen said there were multiple bills of lading that had varying descriptions of the cargo as "diesel," "solvent" and "Tecsol," but explained that this was of no concern to Eitzen as those were all products that the vessel was permitted to transport.

Gamboa testified that he is the principal of both Carib-Bahamas and Carib-Florida and that he controls both entities.

Based on the testimony and evidence presented during the bench trial, the magistrate judge found that Carib-Bahamas and Carib-Florida were separate, sister corporations with common ownership and that Carib-Bahamas was the entity that was a party to the underlying contracts, not Carib-Florida.

The trial court found that Eitzen had proven by a preponderance of the evidence that "the cargo loaded on the Sichem Challenge was Venezuelan national diesel that Carib-Bahamas was attempting to smuggle out of Venezuela without the proper permits."

It also found that "Gamboa knew of the nature of the cargo he was exporting," as evidenced by "his repeated instructions that the cargo should not be referred to as diesel; (2) his directions to change the description of the cargo on the Glen after it left Venezuela; and (3) the fact that he was responsible for selling the cargo and, therefore, would have had to know what he was selling and had purchased and sold the same cargo before."

The trial court ruled that Carib-Bahamas was liable for the breach of contract damages and awarded Eitzen a total judgment of $1,110,276.99 against Carib-Bahamas.

Clause 19 of the Asbatankvoy provides an exception to liability for vessel, master or owner and charterer in the event of "any loss of damage or delay or failure in performing hereunder, arising or resulting from: act of God; act of war; perils of the sea; act of public enemies, pirates or assailing thieves; arrest of restraint of princes, rulers or people; or seizure under legal process provided bond is promptly furnished to release the vessel or cargo; strike or lockout or stoppage or restraint of labor from whatever cause, either partial or general; or riot or civil commotion."

The defendants argued the "restraint of princes" exception in Clause 19 absolved them from liability, and the trial court agreed "a charterer such as Carib-Bahamas could be relieved of liability under the restraint of princes doctrine for damages not otherwise specified in the charter party if it proved that the damages resulted from the seizure of the cargo by a governmental authority, such as the Venezuelan government."

But it held Carib-Bahamas could not "avail itself of this exception from liability since the evidence establishes that the restraint by the foreign government was the result of its own misconduct."

"However, with respect to the veil-piercing claim, the trial court found that Eitzen had failed to prove by a preponderance of the evidence that Carib-Florida should be held liable as the alter ego of Carib-Bahamas. The trial court found that there was a lack of evidence in the record with respect to many of the alter ego factors."

Although the companies "shared a common address, had common ownership and Carib-Florida was used to handle Carib-Bahamas's financial transactions, the evidence established that the two entities maintained their separate corporate existences. Both entities had separate bank accounts, and there was no evidence regarding common business departments or whether the two entities filed consolidated financial statements or tax returns.

"Further, although all of Carib-Florida's funds were derived from the business of Carib-Bahamas, there was no evidence regarding whether Carib-Bahamas used the property of Carib-Florida as its own or vice versa. The record was also silent as to whether the business records of the two companies were kept separate. Moreover, there was no evidence that Carib-Bahamas used Carib-Florida for any fraudulent purpose or to avoid its liabilities or that Carib-Florida engaged in any fraudulent transactions itself."

The 11th Circuit said, "Accordingly, in light of the findings of fact, the trial court did not err in denying Eitzen's veil-piercing claim." The judgment of the trial court was affirmed.

The case is: *Eitzen Chemical (Singapore) PTE, Ltd., et al. v. Carib Petroleum, Inc., et al*. (11th Circuit. No. 17-14697. Sept. 4. 2018).

Download a copy at:
https://law.justia.com/cases/federal/appellate-courts/ca11/17-14697/17-14697-2018-09-04.html

Respectfully submitted:

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