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PIERCING THE CORPORATE VEIL IN WYOMING

The doctrine that the legal entity of a corporation may be disregarded when necessary for the justice of the case¹ was pronounced in 1932 by the Wyoming Supreme Court. Before that Wyoming courts adhered to the general rule that "a corporation will be looked upon as a legal entity,"² but once the exception, "until sufficient reason to the contrary appears," was recognized it was used and expanded.

The original holding that the corporate entity could be disregarded to promote justice was made in 1809 by the United States Supreme Court,³ which reached back to a 1702 English court decision⁴ for its precedent. Although this decision was later disregarded and overruled it established the principle and American courts found broader uses for it, in early cases where a corporation was used to defraud creditors of a partnership⁵ and in some of the first monopoly actions.⁶ Since then the principle has been applied in cases in which the courts found the corporate entity was used to defeat public convenience, justify wrong, protect fraud, defend crime,⁷ evade private or public obligations, evade a statute, or to achieve or perpetuate a monopoly.⁸ The principle has also been used to protect rights of minority stockholders,⁹ to hold stockholders liable in cases of corporations formed with obviously inadequate capital,¹⁰ to deny recovery in equity by corporations when the stockholders, themselves, have no standing in equity,¹¹ and many others. The use to which the corporate form is put is the controlling factor with respect to disregarding the corporate entity.¹²

In general, there are two requirements before the corporate entity may be disregarded: there should be such a unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist, and if the acts are treated as those of the corporation alone an inequitable result will follow.¹³ There must be shown not only control and influence by one or a few persons¹⁴ but also bad faith in some form.¹⁵

The principle is known by several names: "disregarding the corporate entity," "piercing the corporate veil," "drawing aside the web of entity,"

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1. *Caldwell v. Roach*, 44 Wyo. 319, 12 P.2d 376 (1932).
 2. *United States v. Milwaukee Refrigerator Transit Co.*, 142 F. 247, 255 (1905).
 3. *Bank of the United States v. Dexeaux*, 5 Cranch 61, 3 L. Ed. 38 (1809).
 4. *City of London v. Wood*, 12 Mod. 669 (1702).
 5. *Booth v. Bunce*, 33 N.Y. 139, 88 Am. Dec. 372 (1865).
 6. *People v. North River Sugar Refining Co.*, 121 N.Y. 582, 24 N.E. 834 (1890).
 7. *United States v. Milwaukee Refrigerator Transit Co.*, supra note 2.
 8. *Bellaire Securities Corp. v. Brown*, 124 Fla. 47, 168 So. 625, 634 (1936).
 9. *Taylor v. Standard Gas & Elec. Co.*, 306 U.S. 307, 59 Sup. Ct. 543, 83 L. Ed. 669 (1939).
 10. *Anderson v. Abbot*, 321 U.S. 349, 64 Sup. Ct. 531, 88 L. Ed. 793 (1944).
 11. *Home Fire Ins. Co. v. Barber*, 67 Neb. 644, 93 N.W. 1024 (1903).
 12. *Francis O. Day Co. v. Shapiro*, 267 F.2d 669 (1959).
 13. *Automotriz del Golfo de California S.A. de C.V. v. Resnick*, 306 P.2d 1 (Calif. 1957).
 14. 18 C.J.S. Corp § 6.
 15. *Chiarello v. Axelson*, 25 Cal. App. 2d 157, 76 P.2d 731 (1938).

indicating that today the issue is still, as Cardozo said in 1926, involved in the "mists of metaphor."¹⁶ The necessary dominance of the corporation for application of the rule has been referred to by such names as "alter ego," "instrumentality," "adjunct," or "agent," but these have been termed but a convenient way of designating the broader equitable principle that the doctrine of corporate entity will not be regarded when to do so would work fraud or injustice.¹⁷

At the turn of the century the Wyoming Supreme Court twice declined to utilize the principle, although it may be maintained that the court was not reluctant to accept it but that the facts did not justify its use. In *Durlacher v. Frazer*,¹⁸ (1898), a heavily-indebted merchant had formed a corporation to which he transferred all his assets. When the corporation became insolvent and its creditors attached its chattels, the plaintiff, a creditor of the individual, replevied the chattels to satisfy his claim. The Wyoming court held for the creditors of the corporation, following the general rule that even though one person owns or controls all of the stock of a corporation, the person and the company are legally two distinct persons.¹⁹

In 1902, in *Grand Rapids Furniture Co. v. Grand Hotel & Opera House Co.*,²⁰ the plaintiff sold some theatre chairs to the individual owner of the opera house, under a written contract that title would not pass until they were paid for. This man sold the opera house and chairs to two others, who joined a third man in forming the defendant corporation, to which they then sold the opera house and chairs. The two had notice of the claim against the chairs, but apparently neglected to advise their third stockholder, who was manager of the corporation, and since the sale contract was not recorded the court held that the corporation had no notice. In denying recovery the court held the corporation could not be treated as a "mere naked body" without capacity to hold property so as to render the incorporators personally liable as being themselves in possession of the chairs.²¹

In 1924 Wyoming came closer to adoption of the principle, in the case of *State Bank of Riverton v. Haun*.²² This was an action for collection on notes held by the plaintiff bank and co-signed by the defendant investment corporation. The defendant corporation owned the bank at the time the notes were made and contended that because the identities of the two firms

16. *Berkey v. Third Ave. Ry. Co.*, 244 N.Y. 84, 155 N.E. 58 (1926).

17. *Taylor v. Standard Gas & Electric Co.*, supra note 9.

18. *Durlacher v. Frazer*, 8 Wyo. 58, 55 Pac. 306 (1898).

19. This decision came only eight years after the use of the principle of disregard of the corporate entity, in the first monopoly case, *People v. North River Sugar Refining Co.*, supra note 6. The situation here was similar to that of *Booth v. Bunce*, supra note 5, except for lack of a finding of fraud.

20. *Grand Rapids Furn. Co. v. Grand Hotel & Opera House Co.*, 11 Wyo. 128, 70 Pac. 838 (1902).

21. Compare with *Hibernia Ins. Co. v. St. Louis & New Orleans Transp. Co.*, 13 F. 516 (1882).

22. *State Bank of Riverton v. Haun*, 30 Wyo. 322, 222 Pac. 45 (1924).

were in effect the same at that time, the notes were not properly indorsed to the bank. The court agreed that the two corporations had been practically one, but since the bank had been subsequently sold, it held that the sale made them separate entities in fact. It refused to disregard the corporate entity, and allowed collection of the notes. However, Justice Blume added in a dictum that "the courts will look beyond mere forms and corporate entities when necessary to preserve rights or promote justice."²³

This dictum was adopted as law in Wyoming in 1932 in *Caldwell v. Roach*,²⁴ also a suit for collection of a note. The plaintiff purchased the note from a corporation of which he was principal owner and which had received it from the defendant as payment for future delivery of water. The defendant contended there was no consideration without delivery of the water, and that the plaintiff as principal owner of the corporation had knowledge of the conditions. In holding for the defendant, Justice Blume stated that the plaintiff and the corporation were in fact one and the same, the water company but an agent or instrumentality, and the transfer of the note actually a transfer from himself to himself.²⁵ His ruling established the principle for Wyoming that "the legal entity of a corporation will be disregarded whenever the recognition thereof in a particular case will lead to injustice."²⁶

The next application of this new doctrine, for Wyoming, illustrates the variety of situations in which it may be applied. The suit, in 1943, *Dutch Maid Bakeries v. Schleicher*,²⁷ involved an effort by a corporation to enforce a non-competitive agreement. The defendant had sold his bakery to the plaintiff corporation and by terms of the sale went to work for it as manager, and then the plaintiff corporation was purchased by a Nebraska firm whose president extended his domination to the new subsidiary. He discharged the defendant, who then went back into the bakery business despite his agreement not to compete. The court refused to enforce the agreement, holding that the Nebraska man, though not a stockholder in the plaintiff corporation, so dominated it that he was for all practical purposes the corporation itself, that his acts could be considered the acts of the plaintiff, and that he had overlooked a duty of fair treatment the plaintiff corporation owed the defendant.²⁸

The following year the Wyoming court expanded the scope of the principle, in *State ex rel. Christensen v. Nugget Coal Co.*,²⁹ which involved a coal mining partnership whose balance in the state workmen's compensation fund was in arrears. Faced with a special assessment, it discon-

23. *Id.* at 352.

24. *Caldwell v. Roach*, *supra* note 1.

25. *Id.* at 334.

26. *Ibid.*

27. *Dutch Maid Bakeries v. Schleicher*, 58 Wyo. 374, 131 P.2d 630 (1943).

28. This situation might well have been one meant by Justice Cardozo in his oft-cited statement in *Berkey v. Third Ave. Ry. Co.*, *supra* note 16, that "dominion may be so complete, interference so obtrusive, that by the general rules of agency the parent will be a principal and the subsidiary an agent."

29. *State ex rel. Christensen v. Nugget Coal Co.*, 60 Wyo. 51, 144 P.2d 944 (1944).

tinued operations as a partnership and transferred all its property to a newly-organized corporation, but then the state treasurer brought suit to collect from the corporation the deficit of the partnership. The situation was comparable to that of the 1898 *Durlacher v. Frazer* case, but there were distinguishing factors: the *Nugget Coal* case involved a continuing obligation, and a choice between debtor and creditor; while the *Durlacher* case involved non-continuing debts and a choice between creditors. The court distinguished the two on another factor, that the *Durlacher* case involved a private debt while the *Nugget Coal* case involved an indebtedness in the nature of a tax, and commented that if the defendant succeeded the whole structure of the State Workmen's Compensation program might be wrecked. Justice Blume went beyond the decision of *Caldwell v. Roach*, and laid down six additional principles.

These principles, which provide broad material for future cases, state that since a corporation's property belongs in equity to its stockholders, it will be held merely an association of individuals or the alter ego, agent, adjunct, or instrumentality of the individuals composing it if its treatment as a separate entity would lead to injustice and contravene state's policy; that such a corporation may be held liable for debt incurred by a partnership before organization of the corporation; that conditions under which the entity may be disregarded necessarily vary according to the circumstances of each case; that to disregard the entity, actual fraud is unnecessary, it being sufficient that not to disregard the entity would bring about an inequitable result; that control of the corporation by the individuals composing it must appear; and that for such control there need not be ownership of all the corporation's stock by the individuals involved.³⁰

The opinion added the interesting dictum that "in tax cases and some other cases even future individual liabilities may at times not be able to be avoided." It also reaffirmed general rules³¹ that a corporation is a separate entity distinct from that of the individuals composing it; a person may incorporate to escape personal liability; ownership of all of the stock of a corporation is insufficient to make it an alter ego of the owner; and a corporation's entity will not be disregarded when to do so would promote injustice and contravene public policy.³²

Two recent federal court cases involving Wyoming litigants cite the Wyoming decisions.³³ In *Shamrock Oil & Gas Co. v. Ethridge*,³⁴ (1958), the owner of an oil rig formed a one-man corporation, sold the rig to it, and then leased it back and continued to operate it on behalf of the

30. *Id.* at 66-73.

31. *Id.* at 66-70.

32. Of interest is that a year earlier the Wyoming Court had declined to disregard the corporate entity in *State v. Laramie Rivers Co.*, 59 Wyo. 9, 136 P.2d 487 (1943), on grounds the corporations concerned were involved in separate properties.

33. Of historical interest as to cases involving Wyoming litigants is a 1909 Sherman Anti-Trust case, *Union Pacific Coal Co. v. United States*, 173 F. 737, in which the fact that the Union Pacific Railroad Company was the sole owner of the coal company was held not sufficient under the facts to hold it responsible for the acts of its subsidiary.

34. *Shamrock Oil & Gas Co. v. Ethridge*, 159 FS 693 (1958).

company, which had no other assets, no other business, kept few records, and apparently existed only on paper. The defendant obtained a judgment against the operator as an individual, and purchased portions of the rig at an execution sale, but the corporation then replevied the rig. The federal court held that the corporation was bound by the execution sale, disregarded the corporate existence on the grounds that it was the mere alter ego of the individual and that recognition of the two as separate entities would result in an injustice, and declared that it is not necessary to prove actual fraud, but enough to show injustice.

Wyoming Construction Co. v. Western Casualty & Surety Co.,³⁵ resulted from a default by the defendant in construction work as a subcontractor, with the plaintiff surety company finishing the job. While the defendant was on the job all of its stock was purchased by the Monolith Portland Midwest Co., also named as defendant, and the plaintiff surety company in its suit to recover its costs relied on the instrumentality theory and contended that Monolith had so dominated the construction company as to cause it to default. Monolith contended that as a separate corporate entity it could not be held for the breach of contract by Wyoming, its subsidiary. The federal court used the *Caldwell v. Roach* precedent that the corporate entity could be disregarded in Wyoming when recognition would lead to injustice, and also cited additional principles of the *Nugget Coal* case.

Thus it is obvious that in Wyoming the courts will disregard the corporate entity when necessary to the justice of the case, and that it is not necessary to show fraud. While in this state the doctrine of disregard of the corporate entity has not been applied in all of the major situations which have come up in other jurisdictions, the *Caldwell v. Roach* holding of preventing injustice, plus the *Nugget Coal* decision to disregard when recognition would contravene state's policy and view that conditions vary according to the circumstances in each case, could conceivably provide the basis for including virtually all cases within the principle in Wyoming.

What, then, is the doctrine today in Wyoming?

It might be stated this way:

As a general rule, a corporation is a separate entity, distinct from the individuals composing it, and the facts that one or more persons own all of the corporation's stock and that it is formed to escape personal liability for corporate debts in the future, are insufficient to disregard the entity of the corporation. However, while the circumstances necessarily vary according to the facts of each case, where an individual or individuals assume and exercise control so complete as to become for all practical purposes the corporation itself, the court will disregard the corporate entity when recognition thereof would lead to injustice, contravene state's policy, evade legal obligations, evade statutory duty, bring about an inequitable result, defeat public convenience, justify wrong, protect fraud, or defend crime.

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35. *Wyoming Const. Co. v. Western Casualty & Surety Co.*, 275 F.2d 97 (1960).