

Reverse Corporate Veil Piercing – Can My Company Be Liable for My Debts? The Bullet Point: Volume 3, Issue 13

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Scope of Arbitration Agreement

TN3 LLC v. Jones, 11th Dist. Geauga No. 2018-G-0171, 2019-Ohio-2503.

This was an appeal of a trial court's decision to dismiss the lawsuit. The plaintiff filed suit alleging various tort and contract claims against a number of defendants for allegedly violating a consulting agreement. The agreement contained both an arbitration clause and a forum selection clause designating California as the proper location for dispute resolution. Despite this, plaintiff filed suit in Geauga County, Ohio. The trial court ultimately dismissed the lawsuit, finding it was subject to binding arbitration and/or that California was the proper forum.

On appeal the Eleventh Appellate District affirmed, but modified the judgment to reflect that the arbitrator has authority to determine what law applies.

The Bullet Point: As discussed previously, Ohio law favors arbitration and any doubt should be resolved in favor of arbitration. As the Ohio Supreme Court has held, "an arbitration provision must be enforced unless it is not susceptible of an interpretation that covers the asserted dispute, with any doubt being resolved in favor of arbitration." To determine whether the claims fall within the coverage of an arbitration clause, courts should "ask if an action could be maintained without reference to the contract or relationship at issue. If it could, it is likely outside the scope of the arbitration agreement. *** Even real torts can be covered by arbitration clauses 'if the allegations underlying the claims "touch matters" covered by the [agreement].'" Moreover, the United States Supreme Court recently decided a case involving arbitrability of claims where the parties agreed to the AAA rules, stating that "when the parties' contract delegates the arbitrability question to an arbitrator, the courts must respect the parties' decision as embodied in the contract."

Reverse Corporate Veil Piercing

***Wick v. Ach, II*, 1st Dist. Hamilton No. C-180243, 2019-Ohio-2405.**

This case involved an attempt at “reverse piercing” of the corporate veil. Plaintiff had obtained a money judgment against the defendant. He then tried unsuccessfully for years to collect on it. Eventually he filed suit against various companies and the judgment debtor seeking recovery on “reverse corporate veil piercing” grounds. The trial court dismissed the complaint, finding that Ohio does not recognize such a claim. On appeal the First Appellate District affirmed, finding that Ohio has not authorized such a cause of action because of various policy concerns.

The Bullet Point: Unlike a traditional piercing-the-corporate-veil scenario, where a corporation deemed an alter ego of an individual renders the individual liable for the debts of the corporation, reverse corporate veil piercing imposes liability on a corporation for an individual’s debts. Reverse piercing “allows a judgment creditor to bypass the normal judgment collection procedure of attaching the judgment to the debtor’s shares in the corporation, and instead attach the corporate assets directly.” Such a shortcut thus places the creditor in a better position than the shareholder herself. Reverse corporate veil piercing has not been adopted by Ohio courts. Rather, recognizing such a claim raises various policy-related concerns, including that these types of claims can be dealt with through other remedies, and negative implications for the stability of the corporate form.

Contractual Consideration

***Forbes v. Showmann, Inc.*, 1st Dist. Hamilton No. C-180325, 2019-Ohio-2362.**

This was an appeal of a summary judgment decision in favor of the defendant on a claim for breach of contract. The plaintiff was hired as a nail technician for the defendant. She attended a work-related holiday party and participated in a raffle. She did not pay for her raffle ticket and she ultimately won a cruise package. A few weeks later, she was terminated from her employment and not given the cruise package. The defendant claimed that a condition of the prize was that the winner had to be employed at the time the cruise was taken. Plaintiff filed suit and ultimately defendant was awarded summary judgment on her breach of contract claim. On appeal the First Appellate District affirmed, finding that no consideration existed for there to be an enforceable contract.

The Bullet Point: A contract consists of an offer, an acceptance, and consideration. Without consideration, there can be no contract. Under Ohio law, consideration consists of either a benefit to the promisor or a detriment to the promisee. To constitute consideration, the benefit or detriment must be “bargained for.” Something is bargained for if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise.