

## Supreme Court Considering a Complete Change to the Standard for Piercing the Corporate Veil

The Pennsylvania Supreme Court is considering a matter that should be of interest to owners of business entities in Pennsylvania and the law firms that represent these entities.

On June 22, 2020, the Pennsylvania Supreme Court granted allocatur in the matter of *Ryan Fell Mortimer v. 340 Associates, et al.*, Docket Nos.: 37 MAP 2020 and 38 MAP 2020. The specific issue the Supreme Court is considering is:

Whether, in this matter of first impression, the Supreme Court should adopt the “enterprise theory” or “single entity” theory of piercing the corporate veil to prevent injustice when two or more sister companies operate as a single corporate combine?

The appeal relates to plaintiff’s efforts to pierce the corporate veil of one entity to get at the assets of a completely separate entity, even though the second entity does not have any ownership in the first entity. A summary of the case is as follows.

Plaintiff was injured when she was hit by a vehicle driven by a drunk driver. The driver was served alcohol in a restaurant that was located in a building owned by McCool Properties, a Pennsylvania LLC. McCool Properties had nothing to do with serving alcohol to the driver and, indeed, was not even a Defendant in the Dram Shop action. The Plaintiff obtained a judgment of \$8,000,000 against the driver of the vehicle, the restaurant and the owner of the liquor license, a company called 340 Associates, also a Pennsylvania LLC. Two individuals are the members of 340 Associates and the same two individuals, and a third individual, are members of McCool Properties. These entities are completely separate, have separate bank accounts, file separate tax returns, follow all corporate formalities and never comingled funds.

After failing to collect on this judgment from the defendants in the Dram Shop case, Plaintiff filed lawsuits against 340 Associates (the liquor license owner) and McCool Properties (the owner of the real estate where the restaurant was located). Plaintiff sought to pierce the corporate veil of 340 Associates to get at the members of 340 Associates (under the traditional and accepted veil piercing theory) and also sought to impose enterprise liability upon McCool Properties under the “single entity” theory. The single entity theory, adopted in the minority of states (but not Pennsylvania) essentially provides that where there are similar owners of two entities that are essentially operated as a “corporate combine”, the liabilities of one entity (herein 340 Associates) can be imposed on the “related” entity (here, McCool Properties) even though they are completely separate entities.

The cases were tried in Chester County to successful defense verdicts. The Court ruled that the elements of traditional veil piercing were not satisfied, and plaintiff could not get at the members of 340 Associates. The Court also refused to “pierce the corporate veil” of McCool Properties as the single entity theory had not been adopted in Pennsylvania. A panel of the Superior Court affirmed unanimously, essentially under the same reasoning.

The Pennsylvania Supreme Court’s consideration of adopting the “enterprise theory” or “single entity theory” will significantly reduce the asset protection that owners of entities currently enjoy. Essentially when there is more than one corporation that have similar owners, the assets of the

similar corporations will be exposed in the event there is a judgment against one of the other “related” entities.

A Trial Lawyers Association filed *amicus* briefs in the Superior Court urging the adoption of this theory which will significantly reduce the protections that owners of these companies have today. We anticipate that there will be significant interest by other organizations in attempting to urge the court to adopt the single entity theory in Pennsylvania.

Owners of entities and business groups have an interest in the outcome of this case. Accordingly, the Supreme Court will accept *amicus* briefs in support of these groups. These briefs will be due the end of August 2020.