Buyers Beware: Piercing the Corporate Veil in the Environmental Context

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The case of *Coty US LLC v. 680 S. 17th Street LLC* clarifies the willingness of New Jersey courts to pierce the corporate veil in the environmental context. 2015 WL 1011664 (2015). Though unpublished, Coty packed a potentially strong punch to Buyers of contaminated property. Because sole member LLCs (or sole shareholder corporations), like the one in this case, are regularly used to purchase real property, the people behind those entities should take note.

As set forth in the seminal case *State Dept. of Env. Protection v. Ventron Corp*., piercing the corporate veil is an extraordinary remedy utilized by courts only to prevent the corporate form from being used as an *alter ego* of the shareholders or members to perpetrate fraud and injustice or defeat public policy. 94 N.J. 473, 500 (1983). However, as exemplified by Coty, the risk of piercing is higher in the environmental context where public policy in favor of successful remediation is strong and strict, and joint and several liability apply.

In Coty, a sole member LLC ("680 LLC") purchased contaminated property. Although 680 LLC had not contaminated the property, it agreed in the purchase and sale agreement ("PSA") to assume all environmental remediation responsibilities. 680 LLC also agreed to indemnify the seller for the same. Coty, 2015 WL 1011664 at *1-2. Although 680 LLC had no assets, it repeatedly represented in negotiations, the PSA, and later to the court, that it could fulfill its obligations. When 680 LLC failed to meet its remediation obligations and could not be reached by NJDEP, NJDEP contacted Coty US LLC ("Coty US") (purchaser of the seller corporation) with a directive. At this point Coty US hired an LSRP and took the actions necessary to avoid the assessment of penalties by NJDEP. Coty US then brought an action for indemnification and to pierce 680 LLC's corporate veil in order to reach the assets of the sole shareholder, Airaj Hasan. *Id.,* at *2-5.

Litigation revealed that 680 LLC's assurances that it could meet its remediation obligations were based on the *personal assets* of Hasan and the value of the other companies in which Hasan was also sole shareholder (as opposed to the assets or value of 680 LLC itself). The 680 LLC was created for the sole purpose of acquiring and holding the real property at issue and notably, had no other assets, cash flow, or income, and had not posted any financial assurances to assure its remediation obligations. The court found it appropriate to pierce 680 LLC's veil because if it had not, Hasan would have been able to use the LLC form "to evade the obligations and liabilities he repeatedly promised his company would satisfy and which he represented… that [680 LLC] would undertake." *Id.,* at *16. Accordingly, Hasan was personally responsible for indemnifying Coty US pursuant to the terms of the PSA to "prevent the fraud and injustice" which would have resulted from shielding the personal assets, which assets formed the basis of his remediation commitments. *Id.,* at *15-16.

Coty can be contrasted with *Interfaith Comm. Org. v. Honeywell Intern. Inc.,* which involved crossclaims by responsible parties under CERCLA regarding liability for contaminated sites owned by Ecarg, Inc. 215 F.Supp.2d 482, 499-501 (2002). Honeywell sought, and failed, to pierce the corporate veil of Ecarg to hold its parent corporation, Grace-USA, personally liable under the theory that Ecarg was Grace-USA's *alter ego.* Similar to 680 LLC in Coty, Ecarg was used to purchase and hold a contaminated property, was undercapitalized, and generated no income. However, unlike in 680 LLC, Ecarg had been formed for the legitimate business purpose of holding property for relocating employees and had a plan to develop the contaminated property for residential purposes. Importantly, transactions between Grace-USA and Ecarg were debited as intercorporate debts that Ecarg was required to repay, a fact which the court ultimately weighed against piercing. *Id*., at 499.

The key lesson here is that corporate buyers of contaminated property, especially sole member LLCs (and sole shareholder corporations), should assume an elevated level of care due to the higher exposure to piercing the corporate veil in the environmental context. Such buyers of contaminated real property must be meticulous in maintaining the corporate entity as wholly separate in purpose and form from the personal assets of the member or shareholder. Piercing the corporate veil primarily happens where an individual abuses the corporate form for personal ends or neglects the formalities of the corporate form while personally dominating or directing operations in a situation which results in violation of law or public policy. Considerable care should be taken to ensure that personal accounts are entirely separate from corporate accounts and that the corporation assuming environmental liabilities strictly adheres to corporate formalities, has a legitimate, income-generating business purpose, and that any external financial support is provided as a formal business arrangement (like the intercorporate loans in Interfaith). Finally, corporate Buyers of contaminated property should strongly vet the representations made in the contractual context and the ability of the corporate buyer to satisfy them.

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