Court of Appeal: Contractual breaches not enough to pierce the corporate veil

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The Court of Appeal recently upheld a trial judge's conclusion that contractual breaches by a one-person-corporation did not rise to the standard of "improper conduct" that would justify "piercing the corporate veil" and holding the individual behind that corporation personally liable. This article outlines what these decisions say about the principle of corporate separateness and the type of conduct that might convince a court to lift the corporate veil.

The dispute in *7120761 Canada Inc. v AGA Global Investments Inc*., 2021 ONSC 2617 centered on a rent-to-own joint venture. Mr. St-Jean and Mr. Vaidya signed four-year agreements on behalf of their companies to purchase two properties. Under the agreements, Mr. Vaidya's company, AGA, was the passive investor giving his company's covenant on the mortgage and standing as the registered owner on title, in exchange for a guaranteed return over four years. Mr. St-Jean's two numbered companies were responsible for handling costs, expenses and tenant issues and were entitled to the risks or rewards on the anticipated sale of the properties at the end of the four-year term.

As the agreements came to an end, Mr. Vaidya refused to cooperate in selling both properties. Mr. St-Jean and his companies then brought a claim against AGA alleging breach of the agreements. They also sought to attribute personal liability to Mr. Vaidya, the sole director of AGA, by naming him as a personal defendant and attempting to pierce the corporate veil of his closely-held company. Mr. Vaidya and AGA counterclaimed.

Superior Court

The trial judge determined that Mr. Vaidya's company, AGA, had breached the agreements, having resiled from an agreement to sell one of the properties and having refused to agree to the eventual sale of the other property. The court ordered Mr. Vaidya to sell both properties and ordered AGA to pay the plaintiffs more than $21,000 in damages.

Justice Donohue rejected the plaintiffs' attempt to seek relief against Mr. Vaidya **personally** for the breaches of his corporation, AGA. First, the court found that the

plaintiffs knew they were dealing with AGA, not Mr. Vaidya. It then referenced the Court of Appeal's decision in *Yaiguaje v. Chevron Corporation* (2018 ONCA 472) for the proposition that "corporate separateness is the rule" unless that rule is being abused. Justice Donohue then went on to conclude that there was no basis in this case to pierce the corporate veil since:

- Mr. Vaidya's admittedly "uncooperative behaviour" on behalf of AGA had not risen to the level of fraud or produced a result "too flagrantly opposed to justice";
- There was no evidence that AGA had been used as a shell for improper activity; and
- Unsubstantiated concerns about collecting against AGA were insufficient in and of themselves to justify piercing the corporate veil.

Court of Appeal

The Court of Appeal's short decision considered only whether the trial judge erred in declining to pierce the corporate veil. The Court upheld Her Honour's decision.

The Court began by reiterating how piercing the corporate veil is the exception, not the rule.

After noting that the agreements were made in a commercial context by parties with an ongoing relationship, the Court agreed with the trial judge that the plaintiffs had been aware that they were dealing with the corporation, AGA, not Mr. Vaidya personally.

The Court of Appeal found that the trial judge had identified the correct test for determining whether to lift the veil, that is, whether the corporate entity was completely dominated and controlled and being used as a shield for fraudulent or improper conduct. Only the second aspect of this test was discussed by the trial judge and the Court of Appeal, presumably because AGA was wholly owned by Mr. Vaidya.

The Court concluded that AGA's breaches of contract did not amount to "improper conduct" that would justify lifting the corporate veil. This was so despite Mr. Vaidya's refusal to cooperate in selling the properties being described by the trial judge as "unreasonable" and "capricious".

Key takeaways

- Context matters. If the trial judge identifies the proper test for piercing the corporate veil, the decision as to whether to pierce or not pierce will be entitled to deference by an appellate court.
- The fact that a closely held corporation is controlled and directed by one individual is not, without more, a basis for piercing and disregarding separate legal personality—even if that individual has acted rudely, capriciously or unreasonably.
- The "improper conduct" needed to pierce the corporate veil, while a context-specific analysis, requires more than unreasonable or selfish behaviour by the person controlling the corporation. Were it otherwise, as the Court of Appeal notes, "virtually every breach of contract by a one-person company could give rise to personal liability".

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