

A Cadillac in Oz

IN THE CLIMACTIC SCENE OF THE CLASSIC 1939 MOVIE, *THE WIZARD OF OZ*, Dorothy's determined pooch Toto exposes the Wizard as an illusion actually operated by a mere mortal. "Pay no attention to the man behind the curtain," the Wizard desperately bellows, as he emulates a flattening tire.

Sometimes, a similar situation can be found here on Earth, even when not wearing ruby slippers. For example, a classic car owner may enter into an agreement with a restoration business that has been set up as a corporation or a limited liability company ("LLC"). Businesses are often set up like that in an effort to protect the business owners from being held personally liable for debts of the business if the business is unable to pay.

But, of course, if the restoration is a disaster, the car owner may also want to hold the individual business owners responsible or pursue the business owners' personal assets to pay a court judgment obtained against them. Although it's often quite difficult to accomplish, sometimes courts will hold a corporation or LLC's owners, members and shareholders personally liable for the debts of the business. Lawyers, perhaps fancying themselves akin to swashbucklers of yore, dramatically call such efforts "piercing the corporate veil."

With this prologue, this month we're off to see (or discuss) the case of *Maurice Ferrigno v. David Button et al.*, decided on September 27, 2012, by the Connecticut Superior Court, Judicial District of New London.

According to the court, Ferrigno owned a "1950 Series 61 Cadillac." Ferrigno claimed that on September 21, 2007, he and Button entered into an oral agreement for the Cadillac's restoration and repair. Although Button is the owner of Absolute Auto, LLC, a limited liability company licensed in Connecticut, Ferrigno claimed that Button entered into the agreement as an individual.

Ferrigno further claimed that, based on the agreement, Button was to perform the work himself, which was to "restore the vehicle to a level of show condition." He claimed Button gave him an oral

estimate that the restoration and repair would cost \$5,500 and would take approximately four months. Ferrigno asserted that he asked Button for a written estimate but did not receive one.

Ferrigno further alleged that Button failed to complete the specified work and failed to perform the work himself. Ferrigno paid \$6,593.39 to Absolute to get the Cadillac. He later learned that the work was completed by another body shop contracted by Absolute. Ferrigno claimed the work completed was defective, substandard, and not of a professional quality, nor was it completed in a timely manner. Ferrigno asserted that Button's conduct reduced the value of the Cadillac. He further claimed Button failed to make the repairs or complete the work, despite oral demands.

Ferrigno sued Button, Absolute, the other shop and its owner.

Button filed a motion to strike (knock out) certain claims against him. Ferrigno opposed that motion.

In its decision, the Superior Court denied Button's motion, allowing Ferrigno's claims against him to survive to be resolved at trial. (Note that this was not a ruling on whether or not such claims had been proven, but rather just whether Ferrigno had alleged sufficient facts to allow the claims to be decided later.)

The court began its analysis by noting the parties' arguments. Button argued that Ferrigno was trying to hold Button personally liable for the acts of the company by piercing the corporate veil. Button asserted that Ferrigno's allegation that Button was the owner of Absolute was not enough to support a claim for personal liability against Button.

Ferrigno, on the other hand, denied he was seeking to pierce the corporate veil. Instead, he argued that his claims against Button were based on his dealings with Button as an individual. Ferrigno argued that he believed Button would be the one performing the work.

The court discussed the concept of piercing. "A court's disregard of an entity's structure is commonly known as piercing the corporate veil... In the usual veil-piercing case, a court is asked

to disregard a corporate entity so as to make available the personal assets of the owners to satisfy a liability of the entity."

It quoted a statute setting forth the general rule that "a person who is a member or manager of a limited liability company is not liable, solely by reason of being a member or manager... for a debt, obligation or liability of the limited liability company..."

However, as reflected in the use of the word "solely," if an agent or officer of a corporation "commits or participates in the commission of a tort [a wrong against another], he is liable to third persons injured thereby." In other words, "[t]he statute thus does not preclude individual liability for members of a limited liability company if that liability is not based simply on the member's affiliation with the company."

Turning to the allegations in the case, the court noted that Ferrigno alleged that Button entered into the contract in his individual capacity, not in his capacity as the owner of Absolute. Ferrigno alleged that Button individually represented to him that Button would perform the work to be done for the agreed-upon price and that Button had the expertise and experience to perform the work in a good and workmanlike manner. Ferrigno alleged that Button was negligent in failing to complete the work specified and failing to complete the work himself.

In other words, Ferrigno was not seeking to hold Button personally liable for an alleged breach of an agreement between Ferrigno and Absolute. Rather, Ferrigno was seeking to hold Button liable for a contract that Button entered into as an individual, and for his own individual actions. Therefore, Ferrigno was not seeking to pierce the corporate veil, and Button's motion to strike on the ground that Ferrigno failed to assert facts sufficient to pierce the corporate veil would be denied.

As of this writing in early March, the case remains pending, potentially proceeding to trial this side of somewhere over the rainbow. ☁️