TAKING IT PERSONALLY

BY LAWRENCE SAVELL

One of the most commonly-encountered (and often-misunderstood) creations of the law is the *corporation*. A corporation exists, by design, largely separate and distinct from the people who own it. Perhaps most significantly, the debts and liabilities of the corporation are ordinarily considered not to be those of the "real" persons running or owning shares of stock in it. Thus, while the corporation can be sued in its own name for corporate debts and liabilities, its shareholders normally cannot be held personally responsible for such obligations.

Corporations may be (and have been) formed for a wide variety of purposes — including to provide goods and services to car collectors. When a customer has a dispute with such an entity, he or she may nevertheless desire to sue not only the corporation but also the individual owner/operator — particularly if the corporation has limited assets. Such efforts, graphically referred to in legal parlance as "piercing the corporate veil" (perhaps a relic from the days of collector chariots), are usually not permitted by courts.

The case of *Price v. Aronson,* decided earlier this year by the Court of Appeals of Indiana, involved such an attempt.

According to the court, Corbitt's Body Shop, Inc. was an Indiana corporation that had Kent Price and his wife, Sandra, as its sole shareholders, directors and officers. Spencer Aronson brought his 1957 Chevrolet Bel Air four-door hardtop to the shop to be restored.

When he stopped by a few months later to check on the progress of the restoration, he noticed that the sign on the front of the store had been changed to "Shadow's Body Shop." He was given a business card reflecting this new name.

Aronson claimed that his Chevrolet was damaged by the work performed at the shop. He sued both the shop and Kent Price personally for negligence and breach of contract. The trial court ruled in Aronson's favor. Price appealed (the corporation did not).

In its February 24, 1994 decision, the Court of Appeals agreed with Price and reversed the trial court's ruling.

The court began its analysis by noting that Indiana courts are reluctant to disregard the corporate status of a business. Thus, "[a] party seeking to pierce the corporate veil bears the burden of establishing that the corporation was so ignored, controlled or manipulated that it was merely the instrumentality of another, and that the misuse of the corporate form would constitute a fraud or promote injustice."

The court rejected Aronson's argument (which the trial court had accepted) that piercing the corporate veil was warranted because the business' signs, cards, and other documentation did not specify its corporate status or contain the words "corporation," "incorporated," "company," or other terms or abbreviations of similar implication. The appellate court ruled that (1) indicating the business' corporate status in such contexts was not required by law, and (2) the failure to do so did not justify holding Price personally liable.

It also rejected Aronson's assertion that Price's failure to file a certificate of assumed name after changing the business' name to Shadow's Body Shop justified piercing the veil. While filing such a certificate was required, there was no evidence that the legislature had intended that failure to do so would result in the corporate status being disregarded.

The court further noted that there was no evidence that Price had made a false representation regarding the identity of the entity with which Aronson was dealing. Moreover, Aronson had not provided any evidence that he relied to his detriment on anything he had been told regarding the business.

Thus, the only evidence in any way suggesting that the corporation was a subterfuge consisted of: (1) Aronson being told that Price was the owner of the shop; (2) Price signing checks and making decisions in Aronson's presence; (3) the signs and business cards not indicating the shop was incorporated; and (4) Aronson not being informed that the shop was incorporated. The court concluded this was not enough: "We do not think this evidence is sufficient to justify imposing personal liability on Price despite the limited liability protection inherent in the traditional corporate form."

Mr. Aronson currently is appealing the ruling to the Indiana Supreme Court. Whatever the outcome, however, the Price case illustrates the difficulties a plaintiff may face in trying to hold a corporation's shareholders, officers, or directors personally responsible for the alleged wrongs of the entity. As a vigilant consumer, therefore, you need to find out exactly whom it is you are really dealing with: the person whose hand you shook and who physically did the work, or a corporation whose assets with which to pay any damages may be severely limited.

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