



MISSOURI'S GENERAL RULE OF ONE CORPORATION NOT BEING LIABLE FOR ANOTHER'S CONDUCT IS REAFFIRMED

Blanks v. Fluor Corp., ____ S.W.3d ____ (Mo. App. E.D.
2014) WL 4589815, September 16, 2014

In *Blanks v. Fluor Corp.*, ____ S.W.3d ____ (Mo. App. E.D. 2014) WL 4589815, September 16, 2014), the Missouri Court of Appeals reversed a jury verdict against Fluor Corporation, because it was improperly based on the conduct of its affiliate which was separately incorporated.

This case involved a class action for personal injuries to minors due to exposure to lead from a southeastern Missouri mine which was operated by a partnership of multiple entities, at least one of which was an affiliate of Fluor Corporation. One of the theories of recovery was that Fluor had controlled and dominated its subsidiaries DRH and Leadco such that they were mere conduits for Fluor. Despite relying on this total domination and control theory, plaintiffs made it clear they did not rely on a piercing the corporate veil theory. Rather, they argued they relied on *Ritter v. BJC Barnes Jewish Christian Health System*, 987 S.W.2d 377 (Mo. App. 1997) for their inter-corporate liability theory. The jury found in plaintiffs' favor in the overall amount of \$358,527,186. Defendants appealed, raising numerous issues, including that plaintiffs failed to properly plead and prove a viable claim against the Fluor Corporation based on its affiliate's conduct.

The Court of Appeals reversed the jury verdict for punitive damages against the Fluor parent entity and thoroughly discussed the two basic theories of inter-corporate common law tort liability: 1) piercing the corporate veil; and, 2) inter-corporate agency. In its attempt to clear up apparent confusion in Missouri law between these two theories, the court undertook a scholarly review of decisions from as far back as 1932 and as recent as 2013. Its didactic mission clearly caused it to recite the basics. For example, it observed that a corporation is an artificial entity recognized by the Missouri Constitution. Among a corporation's principal attributes is its legal existence separate and apart from its shareholders. As a corollary, two separate corporations are regarded as wholly distinct legal entities, even if one partly or totally owns the other. "In the eyes of the law, two different corporations are two different persons. ...even if one ...is the sole shareholder of the other." *Id.*, at 47. The *Blanks* court also stated that "in certain instances, courts will make an exception and hold a parent corporation liable for the acts of a subsidiary." *Id.* For the most part such an exception to insulation from liability is based one of two theories: 1) piercing the so-called corporate veil, where the corporations have ignored the separateness for an improper purpose; and, 2) agency, where one corporation specifically directs another corporation (usually an affiliate) to act, which conduct then causes injury to a third party.

The court observed that the history of Missouri court's experiences and articulation of both the piercing the corporate veil theory and the agency theory may have led to a conceptual blurring of the two. It found that more than one court merged the concept and application of piercing the corporate veil with an agency analysis, even though the two are distinctly different. *Blanks*, at 49 – 50.

In concluding that plaintiffs here failed to make a case against the Fluor parent corporation for the conduct of its subsidiary, the appellate court held that plaintiffs did not prove an agency relationship existed between the Fluor parent corporation and its subsidiary. Therefore, plaintiffs could not recover against the parent entity. *Id.*, at 55. Complete domination and control is not required under the agency theory, but the conduct at issue must be directed by the principal and must be the proximate cause of the injury. One of the essential elements of the agency relationship is that “the principal has the right to control the conduct of the agent with respect to matters entrusted to him. *Id.*, at 52. “Only the precise conduct instigated by the parent is attributed to the parent.” *Id.*, at 51. Moreover, the court made clear that the Missouri Supreme Court's decision in *State ex Rel. Ford Motor Company v. Bacon*, 63 S.W.3d 641 (Mo. Banc 2002), with its specific reliance on Restatement (Second) of Agency, section 1, controls as to what is needed to show an inter-corporate agency relationship. *Blanks*, at 54 – 55.

As to the theory of piercing the corporate veil, the *Blanks* court observed at one point that the Missouri Supreme Court has recently reaffirmed its previous admonition that the parent-subsidiary separation should be ignored “with caution and only when the circumstances clearly justify it.” *Id.*, at 49. To make a submissible case on this theory, a plaintiff must plead and prove three basic components: a) complete domination of the other corporation, such that it has no will or mind of its own and is a mere conduit; b) such control must have been used to commit a fraud or wrong, to perpetrate the violation of a statute or other positive legal duty; and, c) the control and breach of the duty must proximately cause the injury or unjust loss complained of. *Id.*, at 48. Ultimately, the court repeated what plaintiffs themselves had been asserting – that they had not pled the piercing the corporate veil theory and did not rely on it.

In sum, *Blanks v. Fluor*, provides a candid assessment of the judicial history of the confusion between theories of piercing-the-corporate-veil and inter-corporate agency. More importantly, the *Blanks* court steps up to provide a strong reminder that the general rule is that corporations are not liable for each other's conduct, and that only through two narrow exceptions can inter-corporate liability be imposed.



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