

GIUFFRIA
v.
RED RIVER BARGE LINES, INC.
(La. App. 1984)

Plaintiff, Peter Giuffria, was involved in a vehicular collision when the van driven by him was hit from behind by a truck operated by Warren Davis and owned by Red River Barge Lines, Inc. At the time of the accident, Davis was an employee of Red River Barge Lines, Inc. and was acting within the course and scope of his employment. Giuffria filed a tort suit against Red River Barge Lines, Inc. and Elevating Boats, Inc. for injuries sustained in the accident. Elevating Boats was named as a defendant because it was the parent company of Red River at the time of the accident.

Plaintiff subsequently filed a supplemental and amending petition in which Pennsylvania General Insurance Company was named as an additional defendant. Pennsylvania General is the plaintiff's uninsured motorist carrier and was named as a defendant due to plaintiff's belief at the time that neither Davis nor Red River had liability insurance.

Pennsylvania General filed an answer and third party demand in which it named Davis and Red River as third party defendants. The third party demand prayed for indemnification by the third party defendants in the event of a judgment against Pennsylvania General. Pennsylvania General then filed a supplemental and amended third party demand in which Elevating Boats, Inc. was also named as a third party defendant. Elevating was named as a defendant due to the fact that it owned a majority (72%) of the stock of Red River Barge Lines, Inc. Pennsylvania General's position was that these two corporations were essentially the same and that the court should "pierce the corporate veil" and hold Elevating responsible for the debts and obligations of Red River.

The jury found that the plaintiff suffered damages of \$25,000 but that the plaintiff's negligence constituted 40% of the total damages. Therefore, an award of \$15,000 was recommended by the jury. The jury also found that the corporate veil should be pierced and that Elevating should be held liable for Red River's debts and obligations.

Judge Richard Garvey entered judgment in favor of the plaintiff and against Pennsylvania General in the amount of \$10,000.00 and against Red River Barge Lines, Inc. in the amount of \$15,000.00, less the amount collected from Pennsylvania General. On the third party demand, judgment was entered in favor of Pennsylvania General and against Red River Barge Lines, Inc. and Elevating Boats, Inc., [jointly and severally], in the amount of \$10,000.00.

On appeal, appellants Red River Barge Lines, Inc. and Elevating Boats, Inc. argue that . . . the trial court erred in finding that Elevating Boats, Inc. was the *alter ego* of Red River Barge Lines, Inc.

As for the finding that Elevating Boats was the alter ego of Red River, testimony at trial established the facts that:

1. Elevating owned 72% of Red River's stock.
2. Both companies had the same president.
3. No corporate minutes were taken and no corporate meetings were held for Red River after March, 1980.
4. No corporate tax returns for Red River were filed in 1981.
5. Elevating made over \$200,000 in loans to Red River.
6. The president of Elevating worked as president of Red River for no salary.

Cases dealing with piercing the corporate veil allow shareholders to be held personally liable for corporate debts by looking at the totality of the circumstances to determine if there was fraud or deceit, commingling of funds, failure to follow statutory formalities, under capitalization, failure to provide separate bank accounts and bookkeeping records, and failure to hold regular meetings. *Kingsman Enterprises, Inc. v. Bakerfield Electric Company*, 339 So.2d 1280 (La.App. 1st Cir.1976). Defendants Red River and Elevating cite the case of *Ceco Corporation v. R & M Industries, Inc.*, 416 So.2d 166 (La.App. 4th Cir.1982), modified on other grounds and *writ denied*, 425 So.2d 709 (La.1982), as authority for not piercing the corporate veil in the instant case. In *Ceco*, the court found that the facts that the president of the corporation did not collect a salary, that the president made interest free loans to the corporation, that no meetings were held and no minutes were kept were insufficient to pierce the corporate veil where there was a sole shareholder who would otherwise be held personally liable. The instant case is distinguishable in that the corporate veil was pierced so that the parent company would be held responsible for the torts of its subsidiary. No individual shareholders are incurring personal liability in this case. Due to the totality of the circumstances, we feel that the trial judge was correct in piercing the corporate veil in this case and in holding Elevating responsible to Pennsylvania General for the torts of Red River.
