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Corporate Veil Pierced in Real Estate Partners' Dispute

Bravo v. 2536-38 North Broad Street Associates

Max Mitchell, The Legal Intelligencer

August 24, 2017

Date of Verdict:

June 28.

Court and Case No.:

C.P. Philadelphia No. 141101464.

Judge:

Patricia McInerney.

Type of Action:

Unjust enrichment.

Injuries:

Monetary damages.

Plaintiffs Counsel:

Dean Weisgold of Dean Weisgold, Philadelphia.

Defense Counsel:

Larry Spector of Larry Spector, Philadelphia.

Comment:

A Philadelphia judge has held a businessman liable for more than \$782,000 after determining that the corporate veil should be pierced in a business dispute involving one of his companies.

In June, Judge Patricia McInerney determined that real estate developer Slavko Brkich should be held liable for the failure to pay his former business partner, plaintiff John Bravo, money owed to him under the limited liability partnership the two created. McInerney determined Bravo was owed \$642,306, plus \$140,109 in interest.

According to McInerney's 31-page opinion outlining the verdict that came after a three-day bench trial, Bravo and Brkich knew each other for several years before Brkich suggested in 2010 that Bravo buy an interest in 2536-38 North Broad Street Associates, a company that had bought property at that address in 1995. Up until that point, 2536-38 North Broad Street Associates had been owned by the Brkich family.

According to McInerney, Brkich told Bravo the mortgage payments were between \$280,000 and \$350,000 per year, and that the property was worth \$6 million. Bravo agreed to join the partnership as a limited partner. He contributed \$150,000 in late 2010, becoming a 10 percent owner. Bravo, according to McInerney, was to receive 10 percent of the cash flow from the partnership pursuant to the partnership agreement.

A few months after entering the partnership, Bravo contributed an additional \$250,000 in exchange for 51 percent ownership of the business. Bravo also agreed to personally guarantee any mortgage refinancing for up to \$4 million.

According to McInerney, Brkich never told Bravo that there was a lien on the property, or that it was listed for foreclosure sale.

The partnership was unable to secure a \$4 million mortgage for the property, and Bravo did not receive distributions he claimed he was entitled to, McInerney said.

Brkich attributed the lack of disbursements to the failure to secure the \$4 million loan. However, between 2010 and 2015, the partnership transferred hundreds of thousands of dollars to other entities controlled by Brkich, according to McInerney.

McInerney said Bravo did not and could not have known that money was being diverted until January 2013, when he received the 2010 and 2011 tax returns from the partnership. Brkich also admitted that he paid himself a salary from the partnership, McInerney said.

Brkich contended that he needed to loan the money to the other entities so that he would not lose those entities, which would have hampered his ability to secure a loan for the partnership.

McInerney said their agreement did not include using money from the partnership to pay off debts from Brkich's other companies and properties.

"Simply stated, [the general partner] and the partnership breached the partnership agreements by failing to pay Bravo 51 percent of the cash flow. Thus, the partnership is liable to Bravo for breach of contract," McInerney said, adding that the defendant "failed to observe corporate formalities and did not keep adequate and proper records."

"It would be unfair not to pierce the corporate veil in the instant case," she said.

Dean Weisgold, who represented Bravo, said the case raised interesting issues in a developing area of the law regarding fiduciary duties between limited and general partners.

"It's a somewhat unusual thing for a judge to [decide to pierce the corporate veil]," Weisgold added. "But I think in this case it was an appropriate decision."

Post-trial proceedings are underway.

— Max Mitchell, of the Law Weekly •

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