

Construction Law Alert

No corporate veil protection for licensed professionals exists in New Jersey

April 1, 2012

Typically, in the absence of fraud, corporate officers cannot be held personally liable for negligent acts of the corporation. The New Jersey Supreme Court has recognized that a corporate entity is a separate entity from its shareholders. *Richard A. Pulaski Const. v. Air Frame Hangars, Inc.*, 195 N.J. 457, 472 (2008). Indeed, a primary reason for forming a corporate entity is to insulate shareholders from the entity's liabilities. *Ibid.* As such, liability will not attach to individual shareholders in the absence of fraud or injustice. *State, Dept. of Env'tl. Prot. v. Ventron Corp.*, 94 N.J. 473, 500 (1983).

While corporate shareholders typically are shielded from liability for negligence, licensed professionals, including architects and engineers, are not. In a recent decision, the Appellate Division reminded us of this important distinction. In *First American Title Insurance Company v. Semester Consultants, Inc.* ("First American"), App. Div., A-5367-10T1 (March 29, 2012), plaintiff, First American Title Insurance Company, appealed several issues, including an order dismissing its claims against a licensed professional engineer, defendant Thomas Olenik.

Amongst the many claims in *First American*, First American sought damages from Olenik for his alleged negligence. Olenik is the president and sole owner of defendant Semester Consultants, Inc., which provides professional engineering and land surveying services. First American owned property comprised of wetlands, upon which it wanted to construct a new home. Given the environmental concerns, First American decided to apply to the New Jersey Department of Environmental Protection (NJDEP) for the necessary permit. The parties entered into a contract for engineering services, pursuant to which Semester Consultants, Inc. was to provide surveys, a site plan, and a freshwater wetlands analysis. First American eventually filed suit because a concept plan that Olenik prepared allegedly contained significant survey errors, which prevented First American from using the plan in connection with the NJDEP permit process.

During the course of motion practice in the *First American* matter, the trial court found that the defendants had acted negligently. Nonetheless, the trial court dismissed the claims against Olenik because it did not find that he committed a fraud, and, therefore, the corporate veil had not been pierced.

On appeal, the Appellate Division reversed this ruling. The Appellate Division reasoned that "[t]here was simply no need to pierce the corporate veil for plaintiff's negligence claim against Olenik to either proceed or succeed. A corporate officer, like Olenik, is subject to individual liability for his negligence if he owes the plaintiff an independent duty imposed by law" such as is the case with professional engineers. Since

a licensed professional “who undertakes to render services in the practice of a profession or trade is required to exercise the skill and knowledge normally possessed by members of that profession in good standing in similar communities” an independent duty arises when he or she is engaged to provide professional services. As such, the matter was remanded for further proceedings.

First American reminds us that licensed professionals, such as architects and engineers, can be found liable for individual negligence without the claiming party having to pierce the corporate veil by proving fraud or injustice. *First American* also reminds us that licensed professionals must work closely with their insurance agents to secure all necessary types of insurance coverage, for example general liability and malpractice coverage, to protect themselves and their business from the myriad of potential claims that can be asserted against them.

* * *

Louis A. Uccello, Esq. is an associate at McElroy, Deutsch, Mulvaney & Carpenter, LLP. He has extensive experience in complex litigation, including construction litigation involving the representation of owners, design professionals, and contractors against claims involving construction defects, architectural and engineering errors and omissions, worksite accidents, and environmental and contamination issues. He can be reached at (973) 425-8732 or via email at luccello@mdmc-law.com.

Peter A. Gaudio, Esq. is a partner at McElroy, Deutsch, Mulvaney & Carpenter, LLP. He has litigation, trial, and appellate experience in areas of practice that include complex construction defect defense and coverage, legal malpractice defense, general civil defense and coverage litigation, and criminal defense. He can be reached at (973) 425-8151 or via email at pgaudio@mdmc-law.com.

The material in this publication should not be construed as legal advice or legal opinions on specific facts. The information in this publication is not intended to create, and the transmission and receipt of it does not constitute, an attorney/client relationship.