

Piercing the Corporate Veil in Illinois: For the First Time, the Jury Can Decide

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Companies, professional corporations, and insurance carriers doing business in Illinois need to know about a trailblazing new case likely to impact their defense against veil-piercing claims. Traditionally, the question of whether a corporate veil can be pierced to reach the shareholders or owners behind a corporate entity has been for the trial court to determine. But in *Benzakry v. Patel*, 2017 WL 1251645 (Ill. App. Apr. 5, 2017), tradition didn't hold: now veil-piercing claims can be decided by a jury instead of the trial court.

What Happened Here?

Plaintiff Emil Benzakry entered into a purchase agreement with KAP Family Investments, LLC ("KAP") to purchase a gas station in Rock Falls, Illinois. The gas station would be an investment to fund his retirement. In making his purchase, he relied on an allegedly misleading listing of the gas station's sales—and later, his tenant abandoned the gas station due to ... a lack of sales. Benzakry was unsuccessful in his attempts to open new businesses at the location. After the gas station permanently closed, he filed a veil-piercing claim against KAP and sued for damages.

At trial, a jury found in favor of Benzakry. Not only did jurors allow damages for fraudulent misdealings in the sale, but they also pierced the corporate veil and found KAP's owner personally responsible. KAP argued a claim of piercing the corporate veil was not a matter for the jury to decide, but rather should be decided only by a judge. Illinois had never addressed this issue at the appellate level, thus teeing this matter up for the Illinois Appellate Court.

The Appellate Court Takes a Look

As in most states, Illinois law provides no right to a jury in an equitable claim; moreover, as in most states, Illinois courts have treated piercing the corporate veil as equitable in nature. Thus, one would think a jury can't decide a claim of piercing the corporate veil, which would seem to call for an equitable (thus judge-given) remedy. But in Illinois, no court apparently had ever explicitly said so before. Better late than never, figured the *Benzakry* court.

In its holding, the Illinois Appellate Court agreed with the general rule that a claim of piercing the corporate veil was equitable in nature, such that an individual bringing this type of claim would not ordinarily have a right to a jury. But in examining Section 2-1111 of the Illinois Code of Civil Procedure (which states “the court may in its discretion direct an issue or issues to be tried by a jury, whenever it is judged necessary in any action seeking equitable relief”), the court found this section provided the trial court discretion to let a jury determine equitable issues.

The Takeaway

In light of the *Benzakry* opinion, businesses and professionals operating in Illinois should expect plaintiffs to plead veil-piercing claims with greater frequency, knowing they (*i.e.*, plaintiffs) perhaps will have an easier time surviving dismissal and getting in front of a jury on such claims. Additionally, businesses are now less likely to obtain a pre-trial ruling granting a veil-piercing defense to end a case without a trial. And because juries are not experts in legal issues pertaining to veil piercing, confusion may result, along with increased personal liability exposure for business owners and professionals operating in Illinois.