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Corporate Owner Lacks Standing to Pursue Legal Malpractice Claim for Corporate Losses

The Appellate Division, Second Department, recently considered an appeal involving a claim by the sole stockholder of a closely held corporation for alleged legal malpractice against an attorney whom she retained to purchase another business. *Baccash v Sayegh*, 53 A.D.3d 636 (2d Dep't 2008).

Plaintiff, Iman Baccash, was the sole officer and shareholder of Iman Bridal Couture, Inc. (Bridal Couture). Plaintiff alleged that she retained the defendant attorney to represent her in purchasing another bridal boutique business named Peggy Peters Limited. She alleged that she intended to purchase the trade name, Peggy Peters, but that the defendant advised her that she would have to purchase the inventory of Peggy Peters in order to acquire this trade name. The plaintiff agreed to purchase the inventory, and claimed that without her knowledge, the defendant negotiated a stock purchase agreement rather than an asset purchase agreement with respect to the Peggy Peters business. Accordingly, the plaintiff was required to assume the trade debt of the prior owner. Plaintiff claimed that she did not read the stock purchase agreement that was signed at the closing.

Plaintiff sued the defendant for legal malpractice in connection with the structuring of the purchase of Peggy Peters as a stock purchase rather than an asset purchase without her knowledge. At trial, plaintiff submitted proof that after purchasing the Peggy Peters stock, Bridal Couture issued \$52,895 to satisfy the debt of Peggy Peters. The jury returned a verdict finding that the defendant failed to exercise reasonable care in his representation of the plaintiff, and awarded total damages in the sum of \$806,000. Defendant moved to set aside the verdict, for judgment dismissing the complaint for failure to establish a *prima facie* case and to set aside the damage award as excessive. Among other things, defendant argued that plaintiff failed to prove that she had sustained damages due to his alleged malpractice as the proof submitted at trial demonstrated that it was Bridal Couture, rather than the plaintiff, which made the payments totaling \$52,895 in satisfaction of the Peggy Peters debt.

The lower court denied the defendant's motion, finding that the plaintiff was the sole officer and shareholder of Bridal Couture and, therefore, the corporation was her alter ego. The court also found that the damage award was excessive, and directed a new trial on damages unless the plaintiff stipulated to reduce the damages to \$52,895, the actual damages proven at trial.

On appeal, the defendant argued that the plaintiff had failed to prove that she suffered any direct damages as a result of the alleged legal malpractice. The Appellate

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Division, Second Department, agreed. The Court noted that the proof at trial demonstrated that all payments of debt on behalf of the Peggy Peters entity after the stock purchase were made by Bridal Couture rather than the plaintiff. “Although it is undisputed that the plaintiff is Bridal Couture’s sole officer and shareholder, a corporation has a separate legal existence from its shareholders even where the corporation is wholly owned by a single individual . . .”

The Court rejected the plaintiff’s argument that the doctrine of piercing the corporate veil should apply to permit the corporation’s separate legal existence to be disregarded, pointing out that the doctrine is typically employed by third parties attempting to circumvent the limitations on liability of corporate owners. Furthermore, the Court found that “[e]ven assuming that the doctrine of piercing the corporate veil would be available to allow the plaintiff to disregard the corporate form in which she chose to do business, no evidence was presented to support the trial court’s conclusion that Bridal Couture is, in fact, the plaintiff’s alter ego. Under these circumstances, the plaintiff’s proof was insufficient to establish that she sustained actual damages as a result of the defendant’s conduct . . . Thus, the plaintiff failed to establish a *prima facie* case of legal malpractice . . .”

This case represents an example of the strict standing requirements applicable to a plaintiff in a legal malpractice action involving a corporate shareholder. ■

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