3rd DCA Piercing The Corporate Veil

By: Alan Gassman

In the 2021 3rd District Court of Appeals case of Segal v. Forastero, Inc., an investor who bought and sold real estate used an LLC he had to enter into a purchase agreement.

The LLC had bought and sold real estate in the past, and had had a bank account, and had filed tax returns, but had no bank account or other assets or activities at the time it entered into the Acquisition Agreement, although the Acquisition Agreement itself was an asset.

At the time that the Acquisition Agreement was entered into, the purchaser was told that the owner of the company had significant assets, and seemed to have believed that these assets were under the company or would be contributed to the company.

The purchase agreement required the LLC, as purchaser, to make a $500,000 escrow account deposit within 3 days of signing the Agreement, but the owner of the LLC, Segal, later testified that he decided not to do so because his physical inspection of the property revealed that it would need significant work and was therefore not a viable candidate for him.

According to the 3rd District Court of Appeals opinion, the trial court that entered a judgment against the LLC for breach of contract found in a Proceedings Supplementary to enforce the judgment that the individual shareholder was responsible for the judgment, thus piercing the veil.

The 3rd District Court of Appeal disagreed, finding that none of the three elements needed to show that the company was an alter ego of Segal or could be pierced were satisfied.

In particular, the 3rd District Court of Appeal found as follows:

1. The LLC was not a mere instrumentality without substance. Even though it had no assets or activities other than the subject contract at the time that it was entered into, the LLC had a past history.
2. The LLC was not used to defraud any creditor. There was never any overt communication that specifically indicated that the company had significant assets or which promised that the assets of the individual defendant were being contributed to the company.
3. There was no evidence to show that the injury to the Seller was caused because of the LLC's failure to pay.

This case points out that when a company is used to shield an individual from liability, it should probably at least have a bank account or other legitimate assets and indicia of existence in order to avoid being used as a mere instrumentality. This also shows that judges who preside over trials or issue summary judgments will often be biased towards enforcing a judgment and finding that a "voidable transfer" or alter ego/veil piercing situation exists in order to satisfy the judge's opinion of what will bring justice to a particular situation.

If Mr. Segal had opened a bank account in the name of the company and had made it more clear and had actually put money in the account that could have been used to pay legal defense costs, then the judge's opinion in the trial court may have been different, saving Segal time and money needed for appeal. This is a reminder that advisors need to base their advice not only on the law but also on how judges may apply it.