Rebuilding a community: the buffalo creek case

Sociology, Community

1. Discuss the concept of corporate veil. Define.

Prior to the inception of the ‘ corporate entity’, a partner in a partnership was held personally liable for all the debts of the company. As the demand for huge capital investment gained momentum and individual investors were reluctant to invest as the risk involved in undertaking virtually all the debt of the business, a new form of business called ‘ corporation’ was born. A corporation is a legal entity, an artificial ‘ person’ created by the law. It is legally entitled to many of the rights, obligations, responsibilities and privileges as an individual.

In spite of the corporation being a ‘ pretended’ or fictitious person, in the eyes of law it as an entity different from the shareholders and controllers who won and run the corporation. The concept of corporate veil implies that the law recognizes difference between the corporation and its shareholders by recognizing that a kind of ‘ veil’ separates the corporation on one side and its shareholders and controllers on the other side, meaning thereby that the owners of the business normally do not hold personal liability for any of the corporation’s liabilities or obligations in excess of their investment in the corporation.

As a reason of it, as an acceptable rule, creditors and other claimants should not go at the back of the corporate veil to reach for the personal assets of the shareholders. The reason for this concept of limited liability of the shareholders of a corporation has its logic on reasonable economic policy. This kind of structure also helps in increasing enterprise and entrepreneurship, and thus competition. Raising of funds and public ownership of corporations is also greatly facilitated. All these benefits finally culminate into benefit to the economy and the consumer.

Thus the term ‘ corporate veil’ may be defined as a concept that implies separation of entity, liabilities, rights and obligations between a shareholder and a corporation.

1. Does the above help or harm the society? Explain.

The concept of corporate veil stems from economic sense. It has come into being in order to facilitate huge investments and big ventures. There are many advantages of keeping the corporation and its owners separate entities inrespectof rights and liabilities and that is why it exists and is acceptable by the public.

As a shareholder does not put an amount of investment in a corporation that is as substantial as a partner puts in the partnership, he normally does not have the incentive to monitor on the daily business of the corporation. The corporation may be run by a group of professionals who have expertise and experience in running a business and who report to the directors who, in turn, are appointed to take care of and enhance the interests of the individual shareholders who have contributed to the capital of the corporation.

Other business forms like partnerships would not find it feasible to venture into businesses where substantial amount of investment is needed. The corporate form of business allows pooling of small investments from various shareholders and makes huge investments possible. Simultaneously, the concept of corporate veil limits the individual shareholders' liabilities only to the extent of investment made by them.

Limited liability also implies reduction of risk from the point of view of an investor. The investor makes small investments in different kind of businesses and thus creates what is called a ' portfolio' of investments for him. If one of the businesses where he has invested is not run properly, what he is going to lose is that part of his total investment which is invested in that particular business.

However, the veil of separate corporate entity also poses some problems, chiefly to the creditors of the corporation. If the company goes bankrupt, the shareholders can guard themselves behind the corporate veil and the creditors can not ask the shareholders to pay the company's debt from their private assets. Thus in such cases, the owners and managers of the corporation are protected while the creditors and other claimants are on the losing side.

Further, given that the managers and owners of the corporation are safe behind the corporate veil, they tend to take risky decisions sometimes. They may not take ' propriety' decisions which otherwise any owner of business who has his business at stake would take. However, this is what corporate governance is all about and this disadvantage is seriously being dealt with.

The concept of corporate in itself is not harmful to the society. In fact, it is beneficial to the economichealthof the society as explained in the previous page.

However, when some wrongful act is done by the corporation, rather, the owners or managers of the corporation, they tend to escape theirresponsibilityby taking undue advantage of the corporate veil. They try to prove that it was the corporation who had committed the wrongdoing and not the owners themselves personally and thus the corporation should be punished and not them personally.

However, in such cases, the courts ‘ pierce’ the corporate veil for the purpose of finding the owners or managers liable for the misconduct committed on behalf of the corporation. The court inspects what is going on within the corporation for the purpose of making a judgment with regard to the actions or association of the owners and managers, in place of plainly assuming distinctness of the corporation from its owners and managers.

1. Discuss if whether corporate veil was pierced in the book’s case. If so why?

The question in case of Buffalo Creek Disaster was whether to hold the owner of the mine i. e. the Buffalo Mining Co. or the ultimate entity behind the act i. e. Pittston liable for damages to the survivors of the disaster. Pittston was the sole stockholder of the Buffalo Mining Co. Stern argued that the Buffalo Mining Co. was operated just as a division of Pittston. He also quoted Mr. Reineke, the president of Pittston, telling New York Times that the responsibility is Pittston’s in the long range. Pittston’s president also testified that Buffalo Mining Co.’s vice-president was acting as Pittston’s agent.

To be able to recover against the parent and to preserve diversity jurisdiction, only Pittston was named, on a piercing the corporate veil theory.

Moreover, there were apprehensions in Stern's mind that the coal companies had more influence within the West Virginia courts than they do within the less political federal courts. If he sues Buffalo Mining Co. which is a West Virginia corporation, he will have to sue only before a West Virginia State Court which had the possibility of undermining the interest of the plaintiffs. On the other hand, if they sue Pittston which is a New York based company he would be able to do it in a Federal Court.

To sue Pittston, it was necessary to pierce the corporate veil. It was necessary to show the Court that who operated Buffalo Mining Co. were not independent management team of the corporation but were the representatives of the ultimate sole stockholder of the corporation i. e. Pittston and thus the ultimate parent company was responsible for the act of the subsidiary.

1. Take the steps of the civil suit and relate them to the books case.

Steps in a civil suit are:

1. Filings of complaints by the plaintiff – Complaints were filed against Pittston in the name of individuals who had suffered physically, financially and of course emotionally and mentally due to the disaster. The Buffalo Mining Co. started to offer immediate but rather small cash payments as compensation primarily for loss of property but the residents of Buffalo Creek wanted to obtain recovery for communal and psychological losses suffered by them in the disaster.
2. Service of the complaint on all defendants – In this case the complaint was served to Pittston (the parent company) instead of The Buffalo

Mining Co. who owned the mine. The former was a major coal company and effectively owned the dam.

3. Answer or demurrer by the defendant – Pittston responded with explanations of the complaints. They argued that it was not a proper party to the action and it was the Buffalo Mining Co. and not Pittston who owned and therefore responsible for the coal mine. Additionally, the defendant sought to challenge the claim that the plaintiffs have suffered psychological injury. They sought a " more definite statement" of the said complaint of psychological injury.
4. Cross-complaint or counterclaim filed and served by a defendant – No such cross- complaint or counterclaim was filed by Pittston.
5. Discovery of the facts (informal and formal interrogatories, depositions, disclosure of experts, requests for admissions, etc.) – The Plaintiffs were allowed to depose Pittston's officials and learn all the facts. In addition to that, the defendants also undertook a comprehensive program of summary. Due to extensive efforts by both the parties to the suit, practically all the mechanisms of Federal Rules were used.
6. Motions to the court by any party to the lawsuit (either to restrict the extent of discovery, compel compliance with discovery requests or to resolve issues based upon evidence revealed during discovery) - The judge ruled that Pittston's motion to dismiss the case would not be entertained for the time being till the plaintiffs were given chance of full discovery on all the issues in the case. Also, after the discovery program was completed, Pittston filed a summary judgment motion. They argued that majority of plaintiffs did not suffer any physical injury

due to the flood waters and thus under the laws of West Virginia they cannot claim damages for psychological suffering. The motion too was defeated and the emotionalstressthat people of Buffalo Creek suffered was recognized.

7. Pretrial proceedings such as case management conferences, settlement conferences, referral to mediation or arbitration, preliminary motions to allow or exclude evidence at trial, pretrial briefs (statements of the facts and applicable law covering the issues to be presented at trial) and jury instructions (if required).
8. Rendering of a judgment by the judge or jury – The plaintiffs and the defendants agreed to end the suit without a trial and thus agreed to a settlement. Thus nearly two years after the date of the disaster, the plaintiffs were able to obtain a settlement of US$ 13. 5 million partly for the property losses but significantly for the “ psychic impairment”.
9. Post trial motions such as motion for mistrial or motion for reconsideration – No such motions were filed by any of the parties to the suit.
10. Appeal of the judgment – As the case was settled out of court, no appeal of the judgment was filed.

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Arnold ; Porter LLP – Articles: Pro Bono

Rebuilding a Community: The Buffalo Creek Case – J Bradway Butler

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