



[Incorporation May Not Be a Shield if You're not Careful](#)



On [at least one occasion](#) here at [Construction Law Musings](#), I have discussed the need to operate your business as a corporation or LLC. The primary reason that I, as a [construction attorney](#), recommend this is for the liability protection against attacks on your personal assets. *Proper* use of incorporation can and does protect your home and other personal assets from attack by creditors with a firewall of sorts that separates your business liabilities and assets from your personal ones.

However, the Henrico County, Virginia Circuit Court recently reminded us all why I italicized "proper" in the last sentence. In [ACE Electric Co. Inc. v. Advance Technologies Inc.](#), the Virginia court considered a lawsuit by ACE Electric against

Advance, a defunct engineering firm, and the owner and principal of Advance, Erik Butler. The suit revolved around the improvement of boilers at the University of Richmond, here in my home town. The essential facts are that Mr. Butler assured ACE and the university that his company was well qualified to take on the project. As the project progressed it became abundantly clear that the assertions were untrue.

Under most circumstances, even in a case such as this [where fraud could have been alleged](#), the claims against the principal of the company would not have worked out for the plaintiff. However, in a somewhat unusual decision, the Henrico, VA court found that, aside from failing to keep separate corporate and personal books and failing to maintain the "corporate formalities" required for the basic protections,

“[I]t would work a profound injustice to allow Mr. Butler to escape liability for repaying this debt”

In short, the court allowed ACE to "pierce the corporate veil" and attack Mr. Butler's personal assets. Such a result was clearly much better for ACE because its judgment will not go into the trash heap of judgments against defunct or judgment proof companies (barring an appeal and reversal).

The takeaways? First, always explore the possibility of veil piercing of the type found in this decision, you may be able to get better leverage and a more collectable judgment. Second, and possibly most importantly, assure that you as a construction company take the fairly minimal steps necessary to assure that your company is protected against just this sort of attack. Make sure that you keep your corporate and individual books, expenses, liabilities and assets separate (particularly in the case where you, like me, are either the only member of the company or are in a small company that passes through its taxable income). Also, assure that you keep a paper trail of corporate formality intact with the State Corporation Commission.

Taking these fairly simple steps and with the help of an accountant and [attorney](#), incorporation will provide solid protection against those wishing to attack your personal assets. As the [ACE](#) decision described above reminds us all, failure to take these steps can lead to disaster.

Image via [Wikipedia](#)

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