

Corporate & Financial Weekly Digest

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Commission Siphoning Supports Corporate Veil Piercing

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The U.S. Court of Appeals for the Second Circuit affirmed a bench trial verdict in a breach of contract case, holding that the district court properly “pierced the corporate veil” and imposed liability on a defendant corporation under an “alter ego” theory.

Plaintiffs sued two corporate defendants, Private Label Sourcing, LLC and Second Skin, LLC, for breach of garment contracts, arguing that the two entities were jointly and severally liable as alter egos of one another. The Second Circuit concluded that there was sufficient evidence in the record to support the district court’s conclusion that Second Skin dominated and controlled Private Label. In particular, the district court found that Christine Dente, a co-owner of Private Label and the sole owner of Second Skin, directed that plaintiffs pay commissions to Second Skin that should properly have been paid to Private Label. The court characterized this transfer of commissions as a “siphoning” of funds from Private Label to Second Skin and noted that defendants provided no commercially reasonable explanation. The improper transfer of funds exacerbated Private Label’s insolvency and left that corporation less able to pay damages.

In addition to the improper transfers, the district court concluded that Private Label and Second Skin (1) failed to adhere to corporate formalities, (2) had overlapping owners and other personnel, and (3) shared office space and equipment. The Second Circuit concluded that the totality of the circumstances adequately supported the district court’s imposition of joint and several liability based on corporate veil-piercing. (*Alateks Foreign Trade, Ltd. et al., v. Private Label Sourcing, LLC & Second Skin, LLC*, No. 09 Civ. 3146, 2010 WL 4923942 (2d. Cir. Dec. 6, 2010))

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