

## REVERSE VEIL-PIERCING — WHETHER A JUDGEMENT CREDITOR HAS THE ABILITY TO LEVY EXECUTION ON THE SHARES AND ASSETS OF A CORPORATION TO SATISFY THE DEBT OF A SHAREHOLDER

By Brandi Binkley<sup>1</sup>

*Yamin v. Carroll Wayne Conn, L.P.*, 574 S.W.3d 50 (Tex. App.—Houston [14th Dist.] 2018, pet. denied).

### **Summary**

In *Yamin v. Carroll Wayne Conn, L.P.*, the appellee, Carroll Wayne Conn (“Conn”), a limited partnership, is a landlord that received a guaranty agreement (“Agreement”) from Stephen Yamin Sr. (“Mr. Yamin”), president and general manager of Yamin Motorcycles, which guaranteed the debt of Junior Motorcycles of Houston LLC (“Yamin Motorcycles”).<sup>2</sup> The Agreement, established in 2004, induced Conn to reinstate the lease.<sup>3</sup> Yamin Motorcycles was owned by Mr. Yamin’s son.<sup>4</sup> Subsequent to the Agreement being made, Yamin Motorcycles defaulted on its lease and was evicted.<sup>5</sup> Following the eviction, Conn sued Yamin Motorcycles on the Agreement.<sup>6</sup> The judgment rendered in 2010 found in favor of Conn and awarded it the following: \$316,294.66 in damages, \$10,625.00 in trial attorney’s fees, and conditional appellate attorney’s fees of up to \$35,000.<sup>7</sup> However, Mr. Yamin did not make any payments toward this judgment.

Prior to the 2010 judgment, in 2006, Mr. and Mrs. Yamin were insolvent and being supported by their daughter (“Gina”).<sup>8</sup> In the midst of being insolvent and while Mr. Yamin still had judgments against him, Mary Ann Yamin (“Mrs. Yamin”) formed a company, Texas Black

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<sup>2</sup> *Yamin v. Carroll Wayne Conn L.P.*, 574 S.W.3d 50, 55 (Tex. App.—Houston [14<sup>th</sup> Dist.] 2018, pet. denied).

<sup>3</sup> *Id.* at 55.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

Iron, Inc. (“Black Iron”).<sup>9</sup> Mrs. Yamin testified at trial that the money used to form the company was a gift from Gina.<sup>10</sup> “Black Iron’s share certificate states that the shares are the ‘Sole & Separate Property of Mary Ann Yamin.’”<sup>11</sup> Although the company was formed by Mrs. Yamin, Mr. Yamin runs Black Iron and pays for all expenses incurred by the Yamin family.<sup>12</sup> Additionally, upon the formation of Black Iron, Mr. and Mrs. Yamin executed a Bill of Sale (“2006 Bill of Sale”), which was used to sell and transfer to Mrs. Yamin, as her sole and separate property, “all of [her] interest, if any, including future income and enhancements therefrom, in Texas Black Iron, Inc.”<sup>13</sup>

The Yamins continued to attempt to protect their assets in Black Iron, as was evidenced by their execution and recording of a Partition/Stipulation Agreement in 2013 (“2013 Partition Agreement”).<sup>14</sup> This agreement did two things: (1) informed the world of the 2006 Bill of Sale and (2) partitioned everything the Yamins owned into Mrs. Yamin’s separate property, with the exception of a few of Mr. Yamin’s items.<sup>15</sup> A few months following the 2013 Partition Agreement, Conn filed suit against Mr. Yamin, Mrs. Yamin, Black Iron, and another company to collect on the 2010 judgment. In this suit, Conn alleged that Mr. Yamin fraudulently attempted to place all of the Yamins’ assets beyond Conn’s and other creditors’ reach.<sup>16</sup> Thus, Conn sought to have the 2006 Bill of Sale and 2013 Partition Agreement declared void under the Texas Family Code, avoided under the Texas Uniform Fraudulent Transfer Act (TUFTA), and to execute on Black Iron’s assets by way of outsider reverse-piercing of the corporate veil.<sup>17</sup> The Yamins defended

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 55-56.

<sup>14</sup> *Id.* at 56.

<sup>15</sup> *Id.* at 56.

<sup>16</sup> *Id.* at 56.

<sup>17</sup> *Id.* at 56.

against Conn through the use of many theories, mainly the unavailability of outsider reverse-piercing of the corporate veil under Texas law and the limitation by statute governing traditional or direct corporate veil-piercing.<sup>18</sup>

The jury of the trial court found that Mrs. Yamin did not acquire her stock of Black Iron by way of a gift from Gina and thus, it was not separate property.<sup>19</sup> The jury also found that under the Texas Family Code and TUFTA the transfers were void and Black Iron was responsible for Mr. Yamin's debt under the common law veil-piercing theory.<sup>20</sup> Most significantly, the trial court granted Conn the right to levy execution on Black Iron's stock and assets.<sup>21</sup>

On appeal, Mrs. Yamin and Black Iron argue that the trial court erred in permitting the levy execution because the shares are Mrs. Yamin's separate property or community property that is subject to her sole management, control, and disposition.<sup>22</sup> Furthermore, Black Iron challenges the application of outsider reverse veil-piercing which permitted the levy execution on Black Iron's assets.<sup>23</sup>

### ***Analysis***

The court begins by analyzing outsider reverse veil-piercing and its application according to Texas law.<sup>24</sup> Under Texas law, a corporation is presumed to be a separate entity from its officers

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<sup>18</sup> *Id.* at 56.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 57.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 66.

and shareholders.<sup>25</sup> However, the courts will at times ignore the corporation fiction—"an act generally referred to as piercing the corporate veil"—"when the corporate form has been used as part of a basically unfair device to achieve an inequitable result."<sup>26</sup> Generally, when the court "pierces the corporate veil," it will hold the shareholder liable for the corporation's debts.<sup>27</sup> Conversely, outsider reverse veil-piercing takes place when the corporation is held liable for the shareholder's debts.<sup>28</sup>

With further analysis, the court takes notice of Conn's contention, that it is entitled to satisfy Mr. Yamin's debt by executing on Black Iron's assets.<sup>29</sup> The court has recognized that reverse veil-piercing is appropriate to circumstances analogous to traditional veil-piercing.<sup>30</sup> These traditional circumstances are "(1) where a corporation is organized and operated as a mere tool or business conduit of another; and (2) there is such 'unity between corporation and individual that the separateness of the corporation has ceased.'"<sup>31</sup> Under these two circumstances, in the name of justice, it would inequitable not to hold the corporation or individual liable.<sup>32</sup>

The appellant Black Iron urged the court to rule against the application of outsider reverse veil-piercing because it would be bad for business and should be left for the legislator to decide.<sup>33</sup> The court had difficulty in realizing how reverse veil-piercing would be any different than traditional

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<sup>25</sup> *Id.* (citing *Grain Dealers Mut. Ins. Co. v. Mckee*, 943 S.W.2d 455, 458 (Tex. 1997); *Wash. DC Party Shuttle, LLC v. IGuide Tours*, 406 S.W.3d 723, 738 (Tex. App.—Houston [14th Dist.] 2013, pet. denied)).

<sup>26</sup> *Id.* (citing *Castleberry v. Branscum*, 721 S.W.2d 270, 271 (Tex. 1986), *superseded by statute on other grounds*, TEX. BUS. ORGS. CODE §§ 21.223–.225).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at n.13

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 67.

<sup>31</sup> *Id.* (citing *Richard Nugent & CAO, Inc. v. Estate of Ellickson*, 543 S.W.3d 243, 266 (Tex. App.—Houston [14th Dist.] 2018, no pet.)).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

veil-piercing, since they both take place under the same circumstances.<sup>34</sup> Additionally, the court noted that the doctrine of reverse veil-piercing is still a common-law doctrine, while now the legislature has preempted the common-law doctrine of traditional veil-piercing.<sup>35</sup>

Black Iron further contends that the traditional veil-piercing statute which preempts the common-law doctrine equally should be applied to reverse veil-piercing due to construction of the statute.<sup>36</sup> The court responded by stating it would “construe the statute to give effect to the legislature’s intent as expressed in the statute’s words.”<sup>37</sup> According to Section 21.224 of Texas Business Organizations Code Annotated (the “Code”), “The liability for an obligation that is limited by Section 21.223 is exclusive and preempts any other liability imposed for that obligation under common law or otherwise.”<sup>38</sup> Thus, the plain language of the statute expressly stated that only liability that is limited by Section 21.223 is preempted.<sup>39</sup> Specifically the statute limits liability “to the corporation or its obligees regarding the shares,” “any contractual obligation of the corporation or any matter relating to or arising from the obligation,” “and any obligation of the corporation on the basis of the failure of the corporation to observe any corporate formality.”<sup>40</sup> But since no one is seeking to hold another liable to Black iron, Section 21.224 is inapplicable.<sup>41</sup> Therefore, the court held as a matter of law that the traditional veil-piercing statute does not apply to Conn’s claim.<sup>42</sup>

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<sup>34</sup> *Id.*; see also *Rocklon, LLC v. Paris* No. 09-16-00070-CV, 2016 WL 6110911, at \*4 (Tex. App.—Beaumont Oct. 20, 2016, no pet.)

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 68.

<sup>37</sup> *Id.*; see *Youngkin v. Hines*, 546 S.W.3d 675, 680 (Tex 2018).

<sup>38</sup> *Id.*; TEX. BUS. ORGS. CODE ANN. §21.224.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

The court also overruled Black Iron’s contention that that reverse veil-piercing should apply only where there was fraud between plaintiff Conn and Black Rock.<sup>43</sup> There was no fraud required by section 21.223 (b) of the Code since that statute did not apply.<sup>44</sup>

Furthermore, in regard to reverse veil-piercing as applied to the debts of a non-shareholder, the court agrees with appellant-Black Iron, that “evidence that a person is a corporate officer is not, without more, sufficient to support a finding of alter ego.”<sup>45</sup> But in the present case, it is evident that Mr. Yamin himself, created Black Iron as a conduit and a business tool.<sup>46</sup> With the jury findings voiding the 2006 Bill of Sale and the 2013 Partition Agreement, Mr. Yamin was essentially a shareholder of the community property, and thus, Black Iron by way of the doctrine of outsider reverse veil-piercing, is liable to Conn.<sup>47</sup> The court disregarded the argument that since the shares were held in Mrs. Yamin’s name, the doctrine could not be applied.<sup>48</sup> Based on its analysis, Black Iron is community property “subject to [Mr. Yamin’s] joint management, control, and disposition.”<sup>49</sup> This makes Mr. and Mrs. Yamin equal owners of undivided interests in all of the community property.<sup>50</sup>

While the court did analyze a TUFTA claim against Mrs. Yamin, it did not against Black Iron because Conn did not assert a TUFTA claim against it.<sup>51</sup> For the aforementioned reason, it was inappropriate for the trial court to hold Mrs. Yamin and Black Iron jointly and severally liable for attorney’s fees, since Mrs. Yamin’s attorney fee liability was based on TUFTA.<sup>52</sup> Additionally,

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<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 68.

<sup>46</sup> *Id.* at 68-69.

<sup>47</sup> *Id.* at 69.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

the common-law doctrine of outsider reverse veil-piercing does not grant an award of attorney's fees.<sup>53</sup> Thus, Black Iron is not liable for attorney's fees.<sup>54</sup>

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.*