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In this case, [Plaintiff] claims that [Corporation] was [Stockholder]'s mere instrument or tool – what the law calls an alter ego. Should you find that [Plaintiff] has proved this claim by a preponderance of the evidence, the law requires you to disregard the separate status of [Corporation] and hold [Stockholder] legally responsible for the corporation's acts.

Under our free-enterprise economic system, the law permits – even encourages – people to form corporations as a way to attract stockholder investments. Stockholders can invest their money in corporate enterprises without risking individual liability for corporate acts and transactions. In return, society gets the benefit of jobs and other commercial activity that corporate businesses create. So, in most cases, the status of a corporation as a separate legal entity apart from its owners or stockholders must be respected and preserved.

But this rule is not absolute, and you can disregard the separate status of a corporation when a stockholder uses the corporation as a mere tool for the purpose of evading or violating a statutory or other legal duty, or for accomplishing some fraud or other illegal purpose.

To decide whether to treat [Corporation] as the alter ego of [Stockholder], you should consider:

(a) the purpose for which the stockholder formed or acquired the corporation;

(b) whether the corporation kept books and records, held regular director meetings, and observed other corporate legal formalities;

(c) whether the corporate funds were comingled with the stockholder's funds;

(d) the activity or inactivity of others as officers or directors in the corporation's business affairs; and

(e) any other factors the evidence disclosed tending to show that the corporation was or was not operated as an entity separate from its owner.

((Rev. 03/2022) | Judicial Council of the United States Eleventh Judicial Circuit)

Annotations and Comments

To prove that a defendant shareholder is the alter ego of a corporation, it must be shown that the shareholder disregarded the corporate entity and made it a mere instrumentality for the conducting of his own affairs and that such control was used to commit fraud or perpetrate the violation of a statutory or other legal duty. *United Steelworkers of Am. v. Connors Steel Co., 855 F.2d 1499, 1506-07 (11th Cir. 1988)*. These requirements are typical under state law as well. See, e.g., *Ex parte Thorn, 788 So. 2d 140 (Ala. 2000)*; *U.S. v. Fidelity Capital Corp., 920 F.2d 827 (11th Cir. 1991)* (applying Georgia law); *Gasparini v. Pordomingo, 972 So. 2d 1053, 1055 (Fla. 2008)* (per curiam).