

Owners of Corporate Entities Can Have Personal Liability to Contractors/Subcontractors Under the Pennsylvania Contractor and Subcontractor Payment Act

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The Pennsylvania Contractor and Subcontractor Payment Act ("CASPA"), 73 P.S. §§ 501 et seq., was enacted in 1994 to discourage unfair payment practices and tactics in the construction industry between owners, contractors and subcontractors. To deter such behavior, CASPA allows for interest at the rate of 1% per month on an amount not paid within the time set forth in the contract or subcontract, and it also imposes a penalty of 1% per month on an amount that is found to have been wrongfully withheld from a contractor or subcontractor. CASPA also allows for the award of reasonable attorney's fees to the substantially prevailing party in a proceeding to recover payment. However, an award by a court or arbitrator of interest, penalty and attorney's fees under CASPA to a contractor against an owner (or to a subcontractor against a contractor) is worthless if the owner (or contractor) is insolvent or without sufficient assets to satisfy the award. Unfortunately, sometimes contractors and subcontractors unknowingly enter into construction contracts with corporate entities with little to no capital or assets.

A corporation is a legal entity separate and distinct from its shareholders, and to that end, serves to shield its shareholders from personal liability for corporate debts and acts. However, under Pennsylvania law, a court may, in certain circumstances, disregard the corporate form and hold the shareholders personally liable for the corporation's debts. This equitable doctrine is commonly known as "piercing the corporate veil," and its fundamental purpose is to prevent fraud, illegality or injustice in cases where the facts warrant such a remedy. There are four factors a court examines in determining whether to pierce the corporate veil: 1) undercapitalization; (2) failure to adhere to corporate formalities; (3) substantial intermingling of corporate and personal affairs; and (4) use of the corporate form to perpetrate a fraud.

In two recent Pennsylvania cases, subcontractors have been awarded CASPA penalties, interest and attorney's fees against the individual owners of the general contractor after proving that piercing the corporate veil of the general contractor was warranted. In *Sunlight Electrical Contracting Co., Inc. v. John J. Turchi, Jr. et al.* (C.C.P. Phila., February Term, 2013, No. 1418), the Philadelphia Court of Common Pleas awarded CASPA penalties, interest and attorney's fees to Sunlight Electrical, the electrical subcontractor for a residential condominium development project in Philadelphia, against John J. Turchi, Jr., the sole owner/shareholder of 23S23 Construction, Inc., the construction manager/general contractor for the project. 23S23 was the entity with which Sunlight Electrical had a written subcontract. Turchi was also the sole officer and owner of Carriage House Condominiums, LP ("CHC LP"), the owner and developer of the project. In determining that the corporate form of 23S23 should be disregarded to hold Turchi liable for the amounts that 23S23 owed Sunlight Electrical under the subcontract and CASPA, the court found that 23S23 was

insolvent and purposely kept insolvent by Turchi, and that Turchi persistently commingled the financial affairs of his entities with his own personal affairs. The court also found that 23S23 did not follow corporate formalities.

Sunlight Electrical followed the Pennsylvania Superior Court's recent decision in *Lomas v. Kravitz*, 130 A.3d 107 (2015). In *Lomas*, Roy Lomas Carpet Contractor, a flooring subcontractor, entered into a contract with Cherrydale Construction Co., the general contractor, to supply and install floors in new construction homes being constructed by Cherrydale. The Montgomery County Court of Common Pleas' determined that piercing the corporate veil of Cherrydale was warranted and awarded Lomas the amount it was owed under the contract and CASPA penalties, interest and attorney's fees against James B. Kravitz, the sole officer and shareholder of Cherrydale.

These recent cases set a precedent for the application of the piercing the corporate veil doctrine in actions to recover payment under CASPA. This is a victory for contractors and subcontractors as it gives them a sharper tool for recovering payment under CASPA in cases where they may have contracted with an insolvent or defunct entity. It also serves as notice to the individual owners of such entities that they can be held personally liability for interest, penalties and attorney's fees under CASPA.