

Fraud Is Now Legal in Texas (for Some People)

By Val Ricks

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In 2017, the 14th Court of Appeals (Houston) held that the unique Texas veil-piercing statute created an immunity from tort liability for misrepresentation. The court refused to let a jury hear a clear fraud case against the individual who committed the fraud.

TecLogistics, Inc. v. Dresser-Rand Group, Inc., 527 S.W.3d 589 (Tex. App.—Houston [14th Dist.] 2017, no pet.).

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As of March 2021, the 14th, El Paso, and Texarkana have adopted the position.

Fort Worth, San Antonio, and Corpus Christi have rejected it.

A thoughtful federal district court opinion by Xavier Rodriguez (former SCOTX) also rejected it.

Unpublished opinions from various courts go both ways.

The issue is live in many courts now.

The Original Problem: too much uncertainty in veil-piercing law because of *Castleberry v. Branscum*, 721 S.W.2d 270 (Tex. 1986):

“We disregard the corporate fiction . . . when the corporate form has been used as part of a basically unfair device to achieve an inequitable result”—when the corporation is

- (1) . . . used as a means of perpetrating fraud [including “sham to perpetrate a fraud,” which could be either actual fraud or constructive fraud—not clear which was required before *Castleberry*];
- (2) . . . organized and operated as a mere tool or business conduit of another corporation [called alter ego];
- (3) . . . resorted to as a means of evading an existing legal obligation; . . .
- (6) . . . relied upon . . . to justify wrong [brings about an “inequitable result”]. * * * *

Id. at 272-73.

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The *Castleberry* court held that constructive fraud alone was sufficient to pierce the veil.

[A]lter ego is only one of the bases for disregarding the corporate fiction.
* * * *

The basis used here to disregard the corporate fiction, a sham to perpetrate a fraud, is separate from alter ego. It is sometimes confused with intentional fraud; however, “[n]either [a] fraud nor [b] an intent to defraud need be shown as a prerequisite to disregarding the corporate entity; it is sufficient if recognizing the separate corporate existence would bring about an inequitable result.”

721 S.W.2d at 272-73 (citations omitted; emphasis added).

“Actual fraud,” the court said, “usually involves dishonesty of purpose or intent to deceive.”

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First appeared as part of the conference materials for the

43rd Annual Corporate Counsel Institute session

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