

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.).

2

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.

3

Unpublished opinions from various courts go both ways.

The issue is live in many courts now.

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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.

5

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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