Piercing the Corporate Veil with the Single Business Enterprise Doctrine

By Casey C. DeReus

At its purest, the Single Business Enterprise Doctrine is a jurisprudentially-created rule that allows a party to pierce the corporate veil, allowing one entity to be responsible for the liabilities of another when the business entity is the "alter ego, agent, tool[,] or instrumentality of the other entity." *Green v. Champion Ins. Co.*, 577 So.2d 249, 257-58 (La. App. 1 Cir.), *writ denied*, 580 So.2d 668 (La. 1991).

The Louisiana Supreme Court has not yet directly defined the parameters of the Single Business Enterprise (SBE) Doctrine. *Brown v. ANA Ins. Grp.*, 07-2116 (La. 10/14/08), 994 So.2d 1265, 1272 n.13 (implicitly embracing the SBE Doctrine but deciding the case on other grounds because the entities in question stipulated that they were a SBE). This has led to interesting and sometimes divergent developments in Louisiana courts.

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The 4th Circuit has noted that whether the SBE Doctrine applies is a question of fact. *Boes Iron Works, Inc. v. Gee Cee Group, Inc.*, 16-0207 (La. App. 4 Cir. 11/16/16), 206 So.3d 938, 948-49; *see also, Grayson v. R.B. Ammon & Assocs., Inc.*, 99-2597, pp. 20-21 (La. App. 1 Cir. 11/3/00), 778 So.2d 1, 15 (citing *Brown v. Automotive Cas. Ins. Co.*, 93-2169, p. 8 (La. App. 1 Cir. 10/7/94), 644 So.2d 723, 728); *Lee v. Clinical Research Center of Fla., L.C.*, 04-0428 (La. App. 4 Cir. 11/17/04), 889 So.2d 317, 323 ("Whether or not a group of entities comprises a single business enterprise is a factual inquiry.").

In *Green*, a seminal case on this doctrine in Louisiana, the court noted the rationale behind the SBE Doctrine is to prevent affiliated corporations from hiding behind business fragmentation. *Id.* at 256. In other words, "[i]f a corporation is wholly under the control of another, the fact that it is a separate entity does not relieve the latter from liability." *Id.* at 257. The *Green* court applied this doctrine in the context of corporations. *Green*, 577 So.2d 249.

Green enumerates an illustrative list of factors that are used to determine whether two corporations are a single business enterprise for the purpose of the SBE Doctrine. *Green*, 577 So.2d at 257-58. No one factor is dispositive of the issue. *Id.* "When determining whether a corporation is an alter ego, agent, tool or instrumentality of another corporation, the court is required to look to the substance of the corporate structure rather than its form. The following factors have been used to support an argument that a group of entities constitute a 'single business enterprise'":

> 1. corporations with identity or substantial identity of ownership, that is, ownership of sufficient stock to give actual working control;
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> 2. common directors or officers;
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> 3. unified administrative control of corporations whose business functions are similar or supplementary;
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> 4. directors and officers of one corporation act independently in the interest of that corporation;
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> 5. corporation financing another corporation;
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> 6. inadequate capitalization ("thin incorporation");
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> 7. corporation causing the incorporation of another affiliated corporation;
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> 8. corporation paying the salaries and other expenses or losses of another corporation;
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> 9. receiving no business other than that given to it by its affiliated corporations;
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> 10. corporation using the property of another corporation as its own;
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> 11. noncompliance with corporate formalities;
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> 12. common employees;
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> 13. services rendered by the employees of one corporation on behalf of another corporation;
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> 14. common offices;
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> 15. centralized accounting;
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> 16. undocumented transfers of

funds between corporations;

17. unclear allocation of profits and losses between corporations; and

18. excessive fragmentation of a single enterprise into separate corporations.

Id. at 257–58.

Recent Developments and Unanswered Questions

A series of cases explores the contours and applicability of the doctrine, considering whether it is limited to corporations or if it also applies to other entities or even individuals. Generally, courts are embracing the doctrine's applicability for other entities but disallowing its use to hold individuals liable.

► ***Brown v. ANA Ins. Grp.***, 07-2116 (La. 10/14/08), 994 So.2d 1265, 1271-72 (summarizing the doctrine as "a theory for imposing liability where two or more business entities [*i.e.*, not just corporations] act as one" but not reaching the question of whether the three entities involved were a SBE since the parties had stipulated that the three entities constituted a SBE).

► ***Nussli US, L.L.C. v. Nola Motorsports Host Committee, Inc.***, 2016 WL 4063823, at *17-18 (E.D. La. 2016), *reconsideration denied*, 2016 WL 6520139 (E.D. La. Nov. 3, 2016) (relying on *Brown* and holding that the SBE Doctrine only applies to business entities and that it may not be applied to hold an individual liable).

► ***Che v. First Assembly of God, Ruston, LA***, 50,360 (La. App. 2 Cir. 1/13/16), 185 So.3d 125, 135-36 (affirming the trial court's judgment and determining that the entities were not a SBE, reasoning that there were no genuine disputes of material fact on this issue when the plaintiff failed to present any competing summary judgment evidence, while the two entities presented deposition testimony and evidence in the form of Constitution and Bylaws and when they lacked shared officers and directors, did not insure the property of the local churches, etc.).

► ***Boes Iron Works, Inc. v. Gee Cee Group, Inc.***, 16-0207 (La. App. 4 Cir. 11/16/16), 206 So.3d 938, 948-49 (4th Circuit summarizing, applying and implicitly adopting the *Green* factors used by the 1st Circuit, and ultimately finding two corporations constituted a Single Business Enterprise and concluding that equity dictated the application of the Single Business Enterprise Doctrine).

► ***Hunter v. Wind Run Apartments, L.L.C. et al.***, 15-05551, pp. 3-5 (CDC La. 9/21/17) (reasoning that *Ogea v. Merritt*, 13-1085 (La. 12/10/13), 130 So.3d 888, "greatly supports the assertion that veil piercing and similar doctrines do not apply to limited liability companies," concluding that the applicability of the SBE Doctrine on limited liability companies should be narrowly construed to conform with La. R.S. 12:1320(D), but ultimately denying summary judgment on other grounds).

► ***GBB Properties Two, L.L.C. v. Stirling Properties, Inc.***, 17-352 (La. App. 3 Cir. 10/25/17), 230 So.3d 225, 227-28, 230-32, *writ denied,* 17-1931 (La. 1/29/18), 233 So.3d 606 (rejecting the defendants' reliance on *Ogea* for the position that the SBE theory had been abolished via legislation, and instead holding that the petition sufficiently pleaded facts stating a cause of action under the SBE theory when it articulated common ownership and control, identified common location and operation from one corporate office, and described the nature of the entity relationship in more than 20 pages; the court ultimately reversed the trial court's judgment granting an exception of no cause of action on the SBE Doctrine).

Conclusion

Although the general development of the SBE Doctrine suggests that it can be used in the limited liability context, the Supreme Court has not yet explicitly approved this rule. *Green* suggests that the doctrine only applies to corporations, yet *Brown* suggests that the doctrine can apply to any business entity where two or more business entities act as one. Since *Green* predates *Brown*, one could argue that, to the extent they conflict, the more recent guidance in *Brown* controls. However, cases like *Hunter* show that this is far from a settled issue.

These cases show that there is a spectrum to the likelihood of success for SBE Doctrine arguments. Practitioners who are considering arguing the SBE Doctrine when the entities at issue involve corporations should be poised for success, especially if they have facts like those set forth in *Che* and plead them accordingly. Practitioners seeking to apply the doctrine to other business entities like limited liability companies have a good faith argument to do so, but because of divergent case law should consider jurisprudence in their circuit and be prepared to address the arguments articulated in the *Hunter* judgment. Finally, practitioners who want to apply the doctrine to hold *individuals* liable will likely fail based on the current jurisprudence.

If arguing for the applicability of the doctrine to non-corporate entities or individuals, practitioners could consider arguing the SBE as a backup plan and leading with a stronger argument based on more settled law. For example, when entities are intertwined, they often respond to discovery together. If a party directs one set of discovery to two entities and those entities respond together, both entities will be bound by the responses. In *Hunter*, the court denied summary judgment on the issue of which entity had care, custody and control of the property involved in that case, since both entities admitted having care, custody and control in response to a Request for Admission. *Hunter*, 2015-05551, at p. 5. Subsequent affidavit testimony stated the contrary. *Id.* This created a genuine issue of material fact and resulted in denial of the motion for summary judgment. Thus, the plaintiff survived summary judgment even though he lost on the issue of the application of the SBE Doctrine. At least until the law becomes more settled, less controversial arguments like these are a more likely way to prevent entities from hiding behind excessive business fragmentation than relying on the SBE Doctrine alone.

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