

11-22-2017

Gardner ex rel. v. Eighth Judicial Dist. Court, 133 Nev. Adv. Op. 89 (Nov. 22, 2017)

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Recommended Citation

Carter, Will, "Gardner ex rel. v. Eighth Judicial Dist. Court, 133 Nev. Adv. Op. 89 (Nov. 22, 2017)" (2017). *Nevada Supreme Court Summaries*. 1113.

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BUSINESS LAW: ALTER EGO DOCTRINE; LLC LIABILITY

Summary

The alter ego doctrine applies to LLCs and corporations, such that creditors may reach manager's assets. The Court held that an LLC does not protect a manager or member from their own individual acts of negligence. Therefore, the Court directed the district court to vacate because, "the varieties of fraud and injustice that the alter ego doctrine was designed to redress can be equally exploited through limited liability companies."²

Background

Petitioners, the Gardners, filed suit on behalf of their child who was injured from a near-drowning at Cowabunga Bay Water Park in Henderson. Petitioners brought suit for negligence against Henderson Water Park LLC and its two managing members West Coast Water Parks, LLC and Double Ott Water Holdings, LLC.

After taking depositions, the Gardners sought negligence claims against the Managers of Cowabunga Bay Water Park as individual defendants, reasoning that the Managers could be liable under the alter ego doctrine. The district court denied the motion relying on NRS 86.371, which states "no member or manager is vicariously liable for the obligations of the LLC solely by reason of being a member or manager."³ The district court concluded that there was no alter ego exception to the protections NRS 86.371 affords LLCs. Therefore, the Managers were improper defendants because the petitioners could not pierce the veil of liability. Petitioners challenged the district court order.

Discussion

Writ Relief

As to the first matter, the Nevada Supreme Court held that the district court had abused its discretion in denying the motion to amend. The district court incorrectly held that NRS 86.371 protected the Managers from any liability, instead of just the liability resulting from the LLC's negligent acts. The district court determined that if the Managers were protected under the statute, then any claim against them would be a claim against an improper defendant and futile. Though the district court was correct in stating that leave to amend should not be granted to futile claims, here the claim was not futile, thus, this Court held the motion should not have been denied.⁴

The district court abused its discretion by denying the Gardner's motion to amend their complaint.

¹ By Will Carter

² *In re Giampietro*, 317 B.R. 841 (Bankr. D. Nev. Nov. 23, 2004).

³ NEV. REV. STAT. § 86.371 (West 2017).

⁴ *Halcrow, Inc. v. Eighth Judicial Dist. Court*, 129 Nev. 394, 398, 302 P.3d 1148, 1152 (2013).

Pursuant to NRS 86.371 a manager cannot be held liable for negligence against an LLC solely for being manager, however, the Managers of Cowabunga Bay were not exempt from liability because of their individual acts of harm.⁵ The Court distinguished this case from such reasoning because here, petitioner’s amended claim was to include the Managers for personal negligence. A plain reading of NRS 86.371 protects members and managers from liability stemming from liabilities of the LLC, but it does not create a blanket protection for members and managers from any liabilities incurred from individual acts.⁶ Thus, the court concluded that the amended complaint stated a negligence complaint against the Managers in their individual capacities making the denial of the motion an abuse of discretion.

The limited liability company

The Court determined that even though an LLC is designed to shield its members from liability, the protections it affords relates only to liability of the LLC. Persons who own the LLC are “members” who can manage the LLC themselves or appoint a manager or group for the task.⁷ Members create an LLC for the tax purposes and to function as a liability shield. Pursuant to NRS 86.371 no member or manager of an LLC is individually liable for the debts or liabilities of the company.⁸

Direct claims against the Managers

The Court agreed with petitioners that the district court erred in relying on NRS 86.371. Here, the Gardners sought to assert direct tort claims for individual actions of the Managers, not liability claims for the LLC generally. As a result, the petitioners do not run into any difficulties with their direct claims because NRS 83.371 only protects managers and members from the liabilities created from the LLC. Because the proposed amendments to the Gardner’s complaint contained acts of the Manager’s own negligence, such as intentional and willful breach of duty, the claims against them were proper.

The alter ego doctrine

With regards to the alter ego doctrine, the Court determined it could be used against an LLC to “pierce the veil” of liability to reach the Manager’s assets. The petitioners argued the doctrine applies to LLCs and the Court agreed. It noted that states across the country apply the alter ego doctrine whether or not the doctrine is statutorily mandated.⁹

The Nevada Legislature codified the alter ego doctrine in 2011.¹⁰ Before it was codified, this Court had recognized the alter ego doctrine to apply whenever, “protections provided by the corporate form were being abused.”¹¹ Because the statute does not indicate that it was intended to apply to LLCs or that it was intended to apply exclusively to corporations, the Court declined to

⁵ NEV. REV. STATE. § 86.371 (West 2017).

⁶ Gardner *ex rel.* v. Henderson Water Park, LLC, 399 P.3d at 351 (2017).

⁷ See NEV. REV. STAT. § 86.081 6–.091 (West 2017); NEV. RES. STAT. § 86.071 (West 2017); NEV. RES. STAT. § 86.291 (West 2017).

⁸ NEV. REV. STAT. § 86.371 (West 2017).

⁹ Montgomery v. eTrepid Techs., LLC, 548 F. Supp. 2d 1175, 1181 (D. Nev. 2008).

¹⁰ NEV. REV. STAT. § 78.747 (2017).

¹¹ LFC Mktg. Grp., Inc. v. Loomis, 116 Nev. 896, 903, 8 P.3d 841, 845–46 (2000).

interpret NRS 78.747 to exclude LLCs.¹² The Court determined LLCs are like corporations and abuse the same protections as corporations. Thus, the Court held the alter ego doctrine applies to LLCs as well.

Conclusion

The Court determined that the district court had abused its discretion in denying the motion. The Court directed the district court to vacate its order denying the Gardners leave to amend their complaint. It held that the alter ego doctrine applies to LLCs because creditors need the same ability to pierce the veil of protection of LLCs as they do for corporations. Therefore, the Managers of Cowabunga Bay Water Park were not improper defendants, and the Gardners must be allowed to amend their complaint.

¹² NEV. REV. STAT. § 78.747 (2017).