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Williamson v. Recovery Ltd. Partnership United States Court of Appeals for the Second Circuit 542 F.3d 43 (Decided August 22, 2008)

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**THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT FOUND A
MARITIME CONTRACT, BUT VACATED A RULE B ATTACHMENT FOR FAILURE TO
PIERCE THE CORPORATE VEIL.**

The United States Court of Appeals for the Second Circuit held that the nature of a non-compete, non-disclosure salvage agreement was maritime in nature, but vacated the Rule B attachment because the Plaintiff failed to present a *prima facie* case to pierce the corporate veil.

Williamson v. Recovery Ltd. Partnership
United States Court of Appeals for the Second Circuit
542 F.3d 43
(Decided August 22, 2008)

The S.S. Central America was a U.S. Mail Steamship that sank off the coast of South Carolina in 1857. Plaintiffs were a group of workers that contracted to assist the defendants – individuals and corporations – in the recovery of the wreckage. Pursuant to an order entered by the United States District Court for the Eastern District of Virginia, defendants obtained a portion of the treasure and sold it. Defendants, however, failed to compensate plaintiffs for their role in the salvage. Therefore, plaintiffs brought suit in the Court of Common Pleas for Franklin County, Ohio, to recover the portion of profits procured from the wreckage that defendants had promised, but failed to pay. Defendants removed the case to the United States District Court for the Southern District of Ohio on the grounds that the dispute concerned a maritime contract and was governed by federal law.

Meanwhile, plaintiffs filed suit in the United States District Court for the Southern District of New York and obtained an ex parte order for the issuance of a writ of attachment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims. Defendants moved, by way of an order to show cause, to vacate the attachment and for fees and costs associated with the application. The district court vacated the attachment as to all but one of the individually named defendants, defendant Thompson. The district court denied vacatur as to the corporate defendants and also denied the defendants requests for fees and costs. Defendants appealed the district court's order and plaintiffs cross-appealed.

On appeal to the United States Court of Appeals for the Second Circuit, the defendants argued that the contract was not maritime in nature; but rather it was a simple non-compete, non-disclosure contract. The plaintiffs argue that non-compete, non-disclosure clauses are not mutually exclusive to maritime contracts.

The contracts at issue are non-compete and non-disclosure contracts, but they also reference maritime service or transactions. The Second Circuit relied on the refined distinction between maritime and non-maritime contracts as set out by *Norfolk Southern Railway Company v. James N. Kirby Pty, Ltd.*¹ Norfolk asks whether a contract has “reference to maritime service or maritime transactions.”² In this regard, the Second Circuit found defendants claim disingenuous because defendants had removed plaintiffs' earlier suit in the Court of Common Pleas of Franklin County, Ohio, to the United States District Court for the Southern District of Ohio on the ground that the contract was maritime in nature and, therefore, the Second Circuit Court of Appeal also held that federal law governed the dispute.

Defendants also argued that plaintiffs failed to meet the notice and service requirements of a Rule B attachment. However, the plaintiffs' briefs and the record both show that plaintiffs gave

¹ 543 U.S. 14, 23-24 (2004).

² *Id.*

defendants notice of attachment as soon as the plaintiffs became aware that the defendants' assets had been attached.

Defendants further argued that the district court abused its discretion by failing to vacate the attachment for equitable reasons. The defendants cited *Aqua Stoli Shipping Ltd. v. Gardner Smith Pty Ltd.*,³ to support their claim. In *Aqua Stoli*, the court ordered vacatur of an attachment pursuant to Rule E(4)(f)⁴ because plaintiffs did not satisfy the minimum requirements of Rule B. In contrast, the district court in this dispute found that plaintiffs satisfied the minimum requirements of attachment. Defendants continued to argue that under *Aqua Stoli*, the attachment must be vacated on equitable grounds if the defendant can prove: “(1) the defendant is subject to suit in a convenient adjacent jurisdiction; (2) the plaintiff could obtain *in personam* jurisdiction over the defendant in the district where the plaintiff is located; or (3) the plaintiff has already obtained sufficient security for the potential judgment, by attachment or otherwise.”⁵ The Second Circuit held that defendants failed to show any of these equitable grounds for vacatur and, therefore, the district court properly denied the defendants motion.

In regards to the defendants' motion for fees and costs associated with defending the plaintiffs' application for a writ of attachment, the defendants argued that they failed to follow the procedures outline in Rule 11 and, subsequently, they should be forgiven as a result of unusual circumstances and simple redundancy. The Second Circuit found this argument meritless since defendants were unable to produce any case law supporting the proposition defendants advanced.

The Second Circuit also considered plaintiffs cross-appeal of the district court's decision to vacate writs of attachment as to all but one of the individually named defendants. The district court had found that plaintiffs failed to establish a *prima facie* case for attachment as to these defendants. Plaintiffs relied on a 1999 statement by defendant Thompson – the only individually named defendant for whom the district did not vacate the order of attachment – that he had the authority to speak for investors and partners (i.e. the other individually named defendants). The Second Circuit, however, found that Thompson did not mention any other defendant by name. Therefore, the court held that plaintiffs did not state a *prima facie* case as to those other individually named defendants.

Plaintiffs other argument was based on the doctrine of piercing the corporate veil. *Kirno Hill Corp. v. Holt*,⁶ states that a plaintiff may attach an individuals assets if that individual hides behind a corporate structure to commit fraud. The court considered the following, non-exhaustive list of factors to decide whether plaintiffs could pierce the corporate veil: “(1) the intermingling of corporate and personal funds, (2) undercapitalization of the corporation, and (3) failure to maintain separate books and records or other formal legal requirements for the corporation.”⁷ Ultimately, plaintiffs were unable to show any of these elements. The Second Circuit affirmed this part of the district court's decision.

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³ 460 F.3d 434, 439 (2d Cir.2006)

⁴ FED.R.CIV.P., ADM. SUPP. RULE E(4)(f)

⁵ *Aqua Stoli Shipping Ltd. v. Gardner Smith Pty Ltd.*, 460 F.3d 434, 445 (2d Cir. 2006).

⁶ 618 F.2d 982, 985 (2d Cir.1980).

⁷ *William Wrigley Jr. Co. v. Waters*, 890 F.2d 594, 600 (2d Cir.1989).