

Killingsworth vs. Killingsworth



This was an action to pierce the corporate veil. A judgment for approximately \$1,700,000.00 (previously won by Mr. Clark) was entered in favor of Killingsworth Pest Control, Inc. (Killingsworth) against Killingsworth Environmental, Inc., a Florida corporation (KE-Florida) over a trademark and trade name dispute. The present garnishment action was brought against Killingsworth Environmental, Inc., a North Carolina corporation, a sister corporation of KE-Florida, to recover \$240,000.00 held by KE-North Carolina in a Wachovia Bank account in partial satisfaction of the earlier judgment. The parties waived a jury and tried the case to the court.

KE-Florida is a large pest control operation in Florida and other Southern states. Killingsworth is a smaller company performing pest control operations primarily in Northern Florida. A judgment for approximately \$1,700,000.00 was entered in favor of Killingsworth and against KE-Florida upon the conclusion of a trademark trial. The judgment had not been fully satisfied. Killingsworth garnished \$240,000.00 in a Wachovia Bank account ostensibly in the name of KE-North Carolina to partially satisfy the outstanding judgment, claiming that KE-North Carolina was liable for the debt of KE-Florida because it was the alter ego of KE-Florida and that the assets of KE-North Carolina were subject to execution to satisfy the \$1.7 million judgment entered against KE-Florida. KE-North Carolina contended that it was properly organized, capitalized, and maintained, and was entitled to full recognition and protection of the separate legal identity of the corporate entity.

In its decision the court wrote: "The standards governing the alter ego issue . . . place a high - but not always insurmountable - burden on the party making the claim. Here the burden was satisfied. KE-Florida has conducted its affairs in a continuing effort to defraud creditors, specifically including [Killingsworth], through the creation and manipulation of corporate entities."

"No corporate stock has ever been issued. Instead, ownership is asserted after-the-fact in whatever manner is deemed to suit the interests of KE-Florida at the time . . . KE-North Carolina generates substantial profits. Those profits are surreptitiously taken out of the corporation for the benefit of KE-Florida without the payment of federal income taxes, in a manner designed to make it difficult for interested persons - including the Internal Revenue Service and judgment creditor Killingsworth - to trace or collect the funds."

KE Florida and KE-North Carolina "are operated at the personal pleasure of, and for the personal interests of the judgment debtors and are the alter egos of one another. . . Because KE-Florida and KE-North Carolina are alter egos, assets ostensibly belonging to KE-North Carolina are in fact assets of KE- Florida also. Thus the funds held by Wachovia ostensibly for KE-North Carolina may be reached by Killingsworth as a judgment creditor of KE-Florida."