

Prepared by the Court

<p>RIVER POINTE HOMEOWNERS ASSOCIATION, INC., a non-profit New Jersey Corporation,</p> <p>Plaintiff (s)</p> <p>v.</p> <p>PULTE HOMES OF NJ, LIMITED PARTNERSHIP, t/a River Pointe by Del Webb; PULTE HOME CORPORATION OF THE DELAWARE VALLEY; DEL WEBB CORPORATION; PULTE GROUP, INC.; PULTE HOME CORPORATION</p> <p>CONTRACTORS: ACIES GROUP; CUNTIS, INC.; NASSAU CONSTRUCTION COMPANY</p> <p>DEVELOPER APPOINTED TRUSTEES: CHARLES FOREMAN; BARBARA JAQUETT; PATRICIA SKROCKI; EVERETT R. HANKINS; JAMES MULLEN; RACHEL RICHARDSON; MARY CHURCHILL; SEAN DORNEY; CRAIG COLLIN; JOHN EVANS JOHN DOE DIRECTOR(S), OFFICER(S), AGENT(S) OR EMPLOYEE(S) OF PULTE HOMES OF NJ LIMITED PARTNERSHIP; DEL WEBB CORPORATION; PULTE GROUP, INC. and/or PULTE HOME CORPORATION, fictitious parties; JOHN DOE TRUSTEE(S) OF RIVER POINTE HOMEOWNERS ASSOCIATION, INC., fictitious parties; JOHN DOE CONTRACTORS (1-200), fictitious parties; JOHN DOE (1-100), fictitious parties</p> <p>Defendant(s)</p> <p>v.</p> <p>PULTE HOMES OF NJ, LIMITED PARTNERSHIP, PULTEGROUP, INC., PULTE HOME COMPANY, LLC, PULTE HOME CORPORATION OF THE DELAWARE VALLEY, DEL WEBB</p>	<p>: SUPERIOR COURT OF NEW JERSEY</p> <p>: LAW DIVISION</p> <p>: OCEAN COUNTY</p> <p>:</p> <p>: DOCKET NO.: OCN-L-002491-17</p> <p>:</p> <p>: Civil Action</p> <p>:</p> <p>: AMPLIFICATION PURSUANT TO</p> <p>: Rule 2:5-1(b)</p>
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CORPORATION, EVERETT R. HANKINS,  
JAMES MULLEN, JOHN EVANS, SEAN  
DORNEY, MARY CHURCHILL, PATRICIA  
SKROCKI, and RACHEL RICHARDSON.

Third-Party Plaintiffs,

v.

BENDER ENTERPRISES, INC.,  
CARFARO, INC., SAMBOL  
CONSTRUCTION CORP., JOCAMA  
CONSTRUCTION CORP., METRO CORP.  
PLUMBING, INC., ACTION SPORT  
SURFACES, INC., FINAL TOUCH GLASS  
& MIRROR, LANDSCAPE  
MAINTENANCE SERVICES, INC.,  
BRIGHTON EXTERIORS, INC., ALL  
MONMOUTH LANDSCAPING & DESIGN,  
INC., UTILITIES CONTRACTING  
SERVICES, INC., MDM SERVICES  
INCORPORATED., and ABC COMPANIES  
1-10.

Third-Party Defendants

AND

JOCAMA CONSTRUCTION CORP.

Third-Party Pulte/Fourth Party River Pointe,

v.

ADVANCED CONCRETE PUMPING  
SERVICE INC., ALL SEASONS  
CONSTRUCTION CO., INC.; BR  
CONSTRUCTION; EURO CONCRETE  
LLC; J. MASONRY CORP.; J.M. PEREIRA  
& SONS, INC.; LOPES CONSTRUCTION  
INC.; RED EAGLE CONCRETE, INC.;  
RENAISSANCE MASONRY CORP. AND  
YUNGA AND SON CONSTRUCTION LLC.

Fourth Party Defendants.

This matter comes before the Court on application of the Defendants Pulte Homes of N.J., Limited Partnership; PulteGroup, Inc.; Pulte Home Company, LLC; Pulte Home Corporation of the Delaware Valley; Del Webb Corporation; Everett R. Hankins, James Mullen, John Evans, Sean Dorney, Mary Churchill, Patricia Skrocki, and Rachel Richardson (collectively, the “Pulte Defendants”), Motion to Strike and to Dismiss River Pointe’s Second Amended Complaint. By Order of November 21, 2024, the trial court permitted the filing of the Plaintiff’s Amended Complaint, however, dismissed without prejudice the plaintiff’s application to pierce the corporate veil of the defendants. The plaintiff in its December 10, 2024, R.2:2-4 and R. 2:5-6, interlocutory appeal has misconstrued the intent and reasoning behind the trial court’s Order. The plaintiff declares that the court has imposed a new layer of proof upon the plaintiff. However, piercing the corporate veil is not a cause of action available to the plaintiff; it is a remedy afforded to the plaintiff if necessary to address an injustice. This remedy may be utilized by the plaintiff through either prejudgment or post judgment application to collect damages. In restricting the corporate veil piercing application of the plaintiff to a post judgment application, the court has attempted to more efficiently manage the protracted discovery in this litigation. Piercing the corporate veil is a remedy provided to the plaintiff under circumstances where (1) a subsidiary corporation is dominated by the parent corporation, and (2) that adherence to the fiction of separate corporate existence would perpetrate a fraud or injustice, or otherwise circumvent the law. *State, Dept. of Environmental Protection v. Ventron*, 94 N.J. 473, at 500-01, 1983. The remedy of corporate veil piercing is provided to plaintiffs to ensure that wrongs committed by corporate defendants will not leave injured plaintiffs without a remedy. The first prong of the corporate veil analysis is to determine whether a corporate shell has been created without any assets as a vehicle to funnel profits to a separate entity for the purposes of defrauding creditors. Under these circumstances,

plaintiffs may bypass their collections efforts against the subsidiary corporate shell and proceed to collect damages against the parent corporation, in either a prejudgment or post judgment application.

It is well established that "a corporation is a separate entity from its shareholders . . . [and] a primary reason for incorporation is the insulation of shareholders from the liabilities of the corporate enterprise." *Ventron, supra*, 94 N.J. at 500, 468 A.2d 150 (citing *Lyon v. Barrett*, 89 N.J. 294, 300, 445 A.2d 1153 (1982)). Those "principles are equally applicable when the shareholder is, in fact, another corporation, and hence, mere ownership of a subsidiary does not justify the imposition of liability on the parent." *Pearson v. Component Tech. Corp.*, 247 F.3d 471, 484 (3d Cir.), *cert. denied*, 534 U.S. 950, 122 S. Ct. 345, 151 L. Ed. 2d 261 (2001). Thus, "[e]ven in the case of a parent corporation and its wholly-owned subsidiary, limited liability normally will not be abrogated." *Ventron, supra*, 94 N.J. at 500, 468 A.2d 150. "In the absence of fraud or injustice, courts generally will not pierce the corporate veil to impose liability on the corporate principals." *Lyon, supra*, 89 N.J. at 300, 445 A.2d 1153. *See Portfolio Fin. Serv. Co. v. Sharemax.com, Inc.*, 334 F. Supp. 2d 620, 626 (D.N.J. 2004) (liability will not be imposed on parent corporation merely because of its ownership of subsidiary).

Veil piercing is an equitable remedy whereby "the protections of corporate formation are lost" and the parent corporation may be found liable for the actions of the subsidiary. *Interfaith Cmty. Org. v. Honeywell Int'l, Inc.*, 215 F. Supp. 2d 482, 497 (D.N.J. 2002). In that regard, "piercing the corporate veil is not technically a mechanism for imposing 'legal' liability, but for remedying the 'fundamental unfairness [that] will result from a failure to disregard the corporate form.'" *Trs. of the Nat'l Elevator Indus. Pension, Health Benefit & Educ. Funds v. Lutyk*, 332 F.3d 188, 193 (3d Cir.2003).

The issue of piercing the corporate veil is submitted to the factfinder, unless there is no evidence sufficient to justify disregard of the corporate form. G-I Holdings, Inc. v. Bennet, 380 F. Supp. 2d 469, 477-78 (D.N.J.2005). See Morris v. Krauszer's Food Stores, Inc., 300 N.J. Super. 529, 542, 693 A.2d 510 (App.Div.). In determining whether a subsidiary corporation has been dominated by the parent corporation, courts should consider whether, "the parent so dominated the subsidiary that it had no separate existence but was merely a conduit for the parent." *Id.* at 501, 468 A.2d 150. See Interfaith, supra, 215 F. Supp. 2d at 497 ("veil-piercing is proper when a subsidiary is an alter ego or instrumentality of the parent corporation"). In determining corporate dominance, courts engage in a fact-specific inquiry considering whether the subsidiary was grossly undercapitalized, the day-to-day involvement of the parent's directors, officers and personnel, and whether the subsidiary fails to observe corporate formalities, pays no dividends, is insolvent, lacks corporate records, or is merely a façade. Bd. of Trs. v. Foodtown, Inc., 296 F.3d 164, 172 (3d Cir. 2002); Pearson, supra, 247 F.3d at 484-85; Marzano v. Computer Sci. Corp., 91 F.3d 497, 513 (3d Cir.1996); Solomon v. Klein, 770 F.2d 352, 353-54 (3d Cir.1985); Seltzer v. I.C. Optics, Ltd., 339 F. Supp. 2d 601, 610 (D.N.J.2004).

Plaintiff's claim that the action of the trial court in dismissing the veil piercing application without prejudice, "*sets this case on a collision course the Comparative Negligence Act, guaranteeing any verdict will be 'incomplete' and a 'miscarriage of justice' compelling remand for a new trial.*" (Plaintiff's brief page 7.) Because the dismissal without prejudice only delays the imposition of a veil piercing remedy the plaintiff's causes of action and the application of the Comparative Negligence Act to all defendants remains unaltered. The court's action in delaying the application to pierce the corporate veil will not adversely impact the design of a jury verdict sheet. The application of a post judgment remedy to pierce the corporate veil does not relieve the

jury of its obligation to determine a defendant's percentage of liability under either the Comparative Negligence Act or the Joint Tortfeasors Contribution Law. Here, the plaintiff has named the Corporate parents of Pulte Homes N.J. as separate and direct defendants in this action. Each corporate defendant has been identified in the Amended Complaint as having committed acts which may subject them to liability for deceptive advertising and improper marketing techniques. Because the jury will determine the liability of all named defendants, the plaintiff will be entitled to collect damages from any party found liable by the jury. The suspension of a veil piercing remedy prior to the verdict does not adversely impact the jury's ability to assess the liability of any party's wrongful conduct. The suspension of the remedy only delays the collection of damages under circumstances where the liable subsidiary corporation was fraudulently created and left without sufficient assets to pay the assigned damage award.

In a post judgment application, should it be determined that a defendant was created for the purpose of committing a fraud, the plaintiff may then seek to pierce the corporate veil and pursue the collection of the damages awarded against subsidiary from the parent corporation. Dismissing the corporate veil piercing remedy without prejudice will have no impact on the plaintiff's ability to collect damages awarded by the jury. Despite the plaintiff's protestations that the trial court has engrafted a new element or exception onto the doctrine of corporate veil piercing, this court's application of the doctrine has not increased the plaintiff's burden, rather it only delays the production of discovery which has yet to be determined as necessary. Here, the court has exercised its discretionary function to regulate its trial calendar upon a case that is now seven years old. The parties to this litigation have had a difficult and tortured history of non-cooperation during the discovery process. Defendant PulteGroup Inc.'s responses to plaintiff's second set of interrogatories consist of fifty-three pages. Most of the answers indicate that the inquiries are

objectionable and improper. The plaintiff has propounded five separate sets of interrogatories as well as five separate demands for the production of documents. Additional sets of interrogatories have been propounded upon the individual Pulte Trustee defendants who the plaintiff has named in this suit. The combined demand for production of discovery consists of over five hundred pages of interrogatories and demands for production of documents.

The court has previously determined that to effectively manage the trial calendar and better manage the ongoing discovery, this matter should be transferred to the Complex Business Litigation Program R. 4:102-4(b). Under the Complex Business Litigation Program, the parties are provided with intensified case management and a more streamlined discovery process. The simultaneous prosecution of both the construction defect and fraud claims against the more than thirty named defendants has compelled the trial court to more actively manage the discovery in this dispute.

While the extraordinary litigation delays in this case have weighed heavily on the trial court's attempts to expedite the discovery process, the ultimate goal is to develop a record where the parties present their dispute to a fact finder in a clear and comprehensive manner. The repeated discovery delays have impeded the trial court's ability to pursue a trial record devoid of uncertainties. Upon reflection, the court is now convinced that that the better practice in litigating this conflict is to permit the plaintiff to pursue the necessary discovery to establish the elements of piercing the corporate veil. Should the Appellate Division determine that this matter is to be remanded, the trial court will preside over a discovery hearing to afford the plaintiff the required threshold of information. The trial court will establish the nature and extent of the information required to determine whether Pulte Homes of NJ was dominated by the parent corporations, and whether the creation of the corporate structure between parent and subsidiary was created for the

purpose of committing a fraud or injustice. To proceed with such an endeavor, it will become incumbent upon the trial court to determine the amount and quality of the discovery required to proceed with these proofs. The hundreds of discovery demands propounded by the plaintiff will have to be revisited and reconsidered by this court. The court anticipates that this process will require an in person hearing with the possibility of the court entertaining live testimony on the necessity of the documents and or depositions requested by the plaintiff. While the court recognizes that the discovery process will be extended, the adoption of a pre-trial discovery hearing should eliminate any conjecture as to the procedure implemented by the trial court. The parties are best served when they present their cases in a complete and unassailable manner.

The revised discovery procedure will further permit the filing of summary judgment motions at the conclusion of all discovery. The trial court's primary function is to render determinations on the sufficiency of the evidence presented to the fact finder. To dismiss without prejudice of the corporate veil piercing remedy, prohibits the trial court from determining all the available remedies in law. Appellate review is best suited to render judgment upon the trial court's application of the law to facts compiled through a complete record. Unfortunately, a record developed where corporate veil piercing has been denied without prejudice prohibits the Appellate Court from passing judgment on whether the appropriate factors were adequately considered and applied. By remanding this matter to the trial court with instructions to proceed with a discovery hearing on the obligation and extent of defendants to produce corporate veil piercing evidence, the trial record will be more fully developed. The advantage of a remand will permit the parties to address the claims of corporate veil piercing and allow the trial court to render a final determination on the merits.