AN INTRODUCTION TO THE LAW OF BUSINESS ORGANIZATIONS

CASES, NOTES AND QUESTIONS

Second Edition

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Chapter Four

PIERCING THE CORPORATE VEIL

A. STATE LAW

MINNIE B. BERKEY v. THIRD AVENUE RAILWAY COMPANY

Court of Appeals of New York.
244 N.Y. 84, 155 N.E. 58, 50 A.L.R. 599 (1926).

[Opinion by Cardozo, J.] The plaintiff boarded a street car at Fort Lee Ferry and One Hundred and Twenty-fifth street on October 4, 1916, in order to go east on One Hundred and Twenty-fifth street to Broadway, and thence south on Broadway to Columbia University at One Hundred and Seventeenth street. She was hurt in getting out of the car through the negligence of the motorman in charge of it. The franchise to operate a street railroad along the route traveled by the plaintiff belongs to the Forty-second Street, Manhattanville and Saint Nicholas Avenue Railway Company (described for convenience as the Forty-second Street Company) and no one else. Substantially all the stock of that company is owned by the Third Avenue Railway Company, the defendant, which has its own franchise along other streets and avenues. Stock ownership alone would be insufficient to charge the dominant company with liability for the torts of the subsidiary * * *. The theory of the action is that under the screen of this subsidiary and others, the defendant does in truth operate for itself the entire system of connected roads, and is thus liable for the torts of the consolidated enterprise * * *.

We are unable to satisfy ourselves that such dominion was exerted. The Forty-second Street Company deposits in its own bank account the fares collected on its route. It pays out of that account and no other the wages of the motormen and conductors engaged in the operation of its cars. It was not organized by the defendant as a decoy or a blind. It was not organized, so far as the record shows, by the defendant at all. There is no evidence that at the time of its formation the defendant had any interest in it as shareholder or otherwise. Its franchise goes back to the year 1884, and through all the intervening years it has preserved its corporate organization with property adequate to the maintenance of

life. Its balance sheet for the year ending July, 1917, shows asset $12,456,847.86. The values there stated are much in excess of the d and liabilities, including in the reckoning of liabilities the outstanc capital stock. In no possible view * * * are they unsubstantial or nc nal. True the subsidiary lost money that year, but so also did its par The fact remains that it was functioning as a corporation continuo and actively. It was so functioning at the trial in 1924. There is no dence or suggestion that it has ceased to function since.

The question is whether other circumstances yet to be noted n tralize these indicia of separate life and operation. The defendant, as have seen, was the owner in 1916 of substantially all the stock of subsidiary corporation. Its president in reporting to the stockholders financial situation at the end of the fiscal year informed them tha make the picture accurate, the statement must exhibit the consolida income, and this was obviously true. Other ties must be shown in ac tion to the one resulting from ownership of shares. The members of two boards of directors were nearly, though not quite the same. E road had the same executive officers, *i.e.*, the same president, treasu general manager, paymaster and counsel. The parent has made loan the subsidiary from time to time, sometimes for construction, sometir for operating expenses. The loan for construction expen ($6,415,152.92) is represented by a demand note. * * * The paren also the holder of the second mortgage bonds, $1,487,000, the first m gage bonds, however ($1,200,000), being issued to the public. The op ating loans are temporary advances for electric power, for materials supplies and for the salaries of executive officers. As a matter of con nience these are made in the first instance out of the treasury of parent company. They are then charged to the account of the subsidia and repaid generally the following month, and not later than the foll ing year. Repayment is inconsistent with an understanding that the p ent in making the advances was operating on its own account the car a connecting line. The charges are more than book entries, mere devi of an accountant. Drafts are drawn upon the subsidiary and paid w its own money. The unpaid advances for operation in July, 1917, w only $253,029.37, and this at the end of a poor year. We are not to c fuse the salaries of the executive officers with the wages of motorm and conductors. The latter, as already pointed out, were paid in the fi instance as well as ultimately by the subsidiary itself. So were ma other expenses for maintenance and repair. So were the many judgme for personal injuries recovered in the past.

One other circumstance or group of circumstances is the subject much emphasis in the arguments of counsel. The defendant was t dominant stockholder, not only in this subsidiary, but also in many o ers. The routes when connected cover an area from the lower part Manhattan at the south to Yonkers and other points in Westchester the north. All the cars, wherever used, are marked "Third Avenue S tem." On the other hand, the transfer slips bear the name in ea

instance of the company that issues them. The cars, when new ones become necessary, are bought by the defendant, and then leased to the subsidiaries, including, of course, the Forty-second Street Company, for a daily rental which is paid. The cars leased to one road do not continue along the routes [of] others. The motormen and conductors do not travel beyond their respective lines. With the approval of the Public Service Commission, transfer slips are issued between one route and another, but transfers could have been required by the Commission if not voluntarily allowed * * *.

Upon these facts we are to say whether the parent corporation, the owner of a franchise to operate a street railroad on Third avenue and the Bowery and a few connected streets, has in truth operated another railroad on Broadway and Forty-second street, and this in violation of the statutes of the State. The plaintiff's theory of the action requires us to assume the existence of a contract between the defendant on the one side and the Forty-second Street Company on the other. The several circumstances relied upon—community of interest and in a sense community of management—are important only in so far as they are evidence from which the existence of a contract may fairly be inferred. The contract in the plaintiff's view was one between the two corporations by which the defendant was to use and operate the other's franchise as its own. If such a contract was made, it was not only *ultra vires*, but illegal, because prohibited by statute. By Public Service Commissions Law (§ 54), "no franchise nor any right to or under any franchise, to own or operate a railroad or street railroad shall be assigned, transferred or leased, nor shall any contract or agreement with reference to or affecting any such franchise or right be valid or of any force or effect whatsoever, unless the assignment, transfer, lease, contract or agreement shall have been approved by the proper commission." By section 56 any violation of the provisions of the statute exposes the offending corporation to continuing fines of large amounts, and its officers and agents to prosecution and punishment as guilty of a misdemeanor. If a written contract had been made for the operation by the defendant of the subsidiary's line no one would doubt that such contract would fall within the condemnation of section 54 of the act. The contract is not the less illegal because made by word of mouth.

We cannot bring ourselves to believe that an agreement, criminal in conception and effect, may be inferred from conduct or circumstances so indefinite and equivocal. Community of interest there must obviously be between a subsidiary corporation and a parent corporation, the owner of its stock. This community of interest would prompt the parent, not unnaturally, to make advances for operating expenses to the subsidiary when convenience would be thus promoted. The advances so made have for the most part been repaid, and in so far as they remain unpaid have been carried as a debt. During all this time the cars have been manned by the subsidiary's servants, who are paid for their work out of the subsidiary's fares. We do not stop to inquire whether the inference of unified

operation would be legitimate in a case where a contract for such extension of the area of activity would be permitted by the law. We f assured that no such inference is to be drawn from acts so uncertain their suggestions where the inference is also one of the commission o crime.

The law prohibits a contract for operation by the parent of a fra chise other than its own without the consent of the appropriate comm sion. It does not prohibit stock ownership, or at least did not, so far the record shows, when the defendant bought the shares. We are n asked to draw from conduct appropriate to the ownership of stock, a fairly explicable thereby, the inference of a contract prohibited by la We do not obviate the difficulty when we say that the stockholders acquiescence have ratified any departure from the restrictions of t charter. They could do this so as to wipe out the transgression of th officers if the act constituting the transgression were *ultra vires* on They could not do so where the act was one prohibited by law * * *. T statute is aimed at more than the protection of the stockholders. It pr tects the creditors also, and beyond the creditors the public. Credit are to be guarded against an increase of liabilities and an impairment assets by an extension of corporate activities not approved by the Pub Service Commission, the representative of the State. The public is to guarded against like consequences, for the public which rides upon t cars has an interest, not to be ignored, in cheap, continuous and efficie operation. These benefits cannot be enjoyed if a road has been plung into insolvency by improvident extensions. "The business of a railro [*i.e.*, a street railroad] is to run its own lines. The law does not permit at its pleasure to run the lines of others" (*Doran v. N. Y. City Int. Ry. C 239 N. Y. 448).*

We do not mean that a corporation which has sent its cars with i own men over the route of another corporation may take advantage the fact that its conduct in so doing is illegal to escape liability for t misconduct of its servant * * *. There is no room for varying constru tions when operation results from acts so direct and unequivocal. defendant in such circumstances is liable for the tort, however illegi mate the business, just as much as it would be if its board of directo were to order a motorman to run a traveler down. We do mean, howev that an intention to operate a route in violation of a penal statute is n to be inferred from acts which reasonably interpreted are as compatib with innocence as with guilt * * *. Such, it seems to us, whether view distributively or together, are the acts relied on here to establish agreement between two corporations that the business of one shall the business of the other. Many arrangements for economy of expen and for convenience of administration may be made between carrie without subjecting them to liability as partners or as coadventure "either *inter sese* or as to third persons" (*Ins. Co. v. Railroad Co., 1 U.S. 146, 158).* For like reasons such arrangements may be made wit out establishing a relation of principal and agent. Where the coadve

ture or the agency, if created, carries consequences along with it that are offensive to public policy, the law will not readily imply the relation it condemns. The basis for the implication must be either intention or estoppel. We perceive no evidence sufficient to support a finding of estoppel. Intention is presumed, unless the inference of innocence is belied with reasonable certainty, to be conformable to law.

* * *

* * * [I]n *Davis v. Alexander [269 U.S. 114]* the case was submitted to the jury upon the theory that the proceeds of operation over the two routes were commingled in a single fund. Not only that, but engines and cars were used indiscriminately, and so also were the crews. The jury were told that all these facts must be found to coexist before the wrong of the subsidiary could be charged against the parent. The Supreme Court in its opinion does not catalogue the circumstances supporting the inference of unity of control. The opinion is confined to the statement that "the shippers introduced substantial evidence in support of their allegations." The facts are disclosed when we examine the record on appeal. So in *Wichita Falls Ry. Co. v. Puckett* [*53 Okla. 463*] the same employees worked on the entire route, and a common treasury received the proceeds of the system. Between such cases and the one before us there exists a distinction plain upon the surface. * * * Liability of the parent has never been adjudged when the subsidiary has maintained so consistently and in so many ways as here the separate organization that is the mark of a separate existence, and when the implication of a contract for unity of operation would be the implication of a contract for the commission of a crime.

The whole problem of the relation between parent and subsidiary corporations is one that is still enveloped in the mists of metaphor. Metaphors in law are to be narrowly watched, for starting as devices to liberate thought, they end often by enslaving it. We say at times that the corporate entity will be ignored when the parent corporation operates a business through a subsidiary which is characterized as an "alias" or a "dummy." All this is well enough if the picturesqueness of the epithets does not lead us to forget that the essential term to be defined is the act of operation. Dominion may be so complete, interference so obtrusive, that by the general rules of agency the parent will be a principal and the subsidiary an agent. Where control is less than this, we are remitted to the tests of honesty and justice (Ballantine, Parent & Subsidiary Corporations, *14 Calif. Law Review, 12, 18, 19, 20).* The logical consistency of a juridical conception will indeed be sacrificed at times when the sacrifice is essential to the end that some accepted public policy may be defended or upheld. This is so, for illustration, though agency in any proper sense is lacking, where the attempted separation between parent and subsidiary will work a fraud upon the law (*Chicago, etc., Ry. Co. v. Minn. Civic Assn., 247 U.S. 490; United States v. Reading Company, 253 U.S. 26, 61, 63).* At such times unity is ascribed to parts which, at least for many purposes, retain an independent life, for the reason that only

thus can we overcome a perversion of the privilege to do business ir corporate form. We find in the case at hand neither agency on the c hand, nor on the other abuse to be corrected by the implication o merger. On the contrary, merger might beget more abuses than it stifl Statutes carefully framed for the protection, not merely of creditors, b of all who travel upon railroads, forbid the confusion of liabilities extending operation over one route to operation on another. In such c cumstances, we thwart the public policy of the State instead of defer ing or upholding it, when we ignore the separation between subsidia and parent, and treat the two as one.

* * *

Crane, J. (dissenting). The United States Supreme Court in *Davis Alexander (269 U.S. 114)* said: "Where one railroad company actual controls another and operates both as a single system, the domina company will be liable for injuries due to the negligence of the subsidia company." This court decided in *Stone v. Cleveland, C., C. & St. L. R Co. (202 N.Y. 352)* "that the ownership of a majority of the stock of a cc poration, while it gives a certain control of the corporation, does not gi that control of corporate transactions which makes the holder of th stock responsible for the latter."

These two decisions are not inconsistent. Each depends upon th particular facts and the nature and extent of the control by the dominar company of the subsidiary. It is largely a question of degree. This wa recognized in the opinion in the *Stone* case when referring to the Feder authorities. We there said (p. 361) that the facts in those cases wer stronger for the plaintiff than in the *Stone* action.

* * *

The plaintiff was injured on the evening of October 4, 1916, by step ping into an unlighted excavation in the street, while alighting from car at the corner of Broadway and One Hundred and Seventeenth stree The proof of negligence for this appeal is unquestioned and need not b further mentioned, so that we may turn our attention at once to the cor poration responsible.

The Forty-second Street Railway Company is a street railroad cor poration having a franchise to operate passenger cars through Broadwa at the point in question. Its authorized capital stock is $2,500,000, o which $2,494,900 is outstanding, and of this the Third Avenue Railwa Company owns $2,471,300. The Third Avenue Railway Company is als a duly authorized and chartered railroad, operating surface lines in th city of New York connecting with and transferring to the cars running or the Forty-second Street line. Its system, which includes the Third Avenue and Amsterdam line, the One Hundred and Twenty-fifth Stree Crosstown line, Broadway-Kingsbridge line as well as the branches o the Forty-second Street Railway, was termed and called "The Third Avenue Railway System." The car from which the plaintiff fell had on i

the words, "Third Avenue Railway System."

The report of the president to the stockholders for the year ending June 30, 1917, stated:

> "The Third Avenue Railway System is composed of the Third Avenue Railway Company and the following subsidiary companies."

The Forty-second Street Railway Company was one of these named subsidiary companies.

"The Third Avenue Railway Company," says the report, "controls all the above companies through ownership of stock and to arrive at the result of the operations it is necessary to consolidate the income accounts and the balance sheets of all the corporations and eliminate the inter-company transactions so that all duplications may be avoided. This explanation is made in order that there may be no misunderstanding in considering the statements appearing in this report."

The outstanding second mortgage bonds, amounting to $1,487,000, were entirely owned by the Third Avenue Railway Company. This second mortgage was past due. $6,415,152.98 was due for construction. It was represented by a note of the Forty-second Street Railway Company given years ago to the Third Avenue Railway Company. It is a demand note.

The officers for both companies were the same. Edward A. Maher, Jr., was the assistant manager of the Third Avenue Railway Company and of the Forty-second Street Railway Company. His father, Edward A. Maher, was the general manager of both. Each railway company had the same president, treasurer, secretary and the same board of directors with some slight variation. "They were practically all the same directors." The following question was asked of Edward A. Maher, Jr.: "Q. Take the Third Avenue Railroad Company and the Forty-second Street and Manhattanville Railroad Company, were they identical? A. They were."

The general auditor, Walter Farrington, was asked:

> "Q. I notice on page 6 of this report this statement: The Employees Association-the statement is as follows: 'The Association on June 30th, 1917, had a membership of 3,412, and had to its credit on that date New York City bonds valued at $79,833.30, and cash on deposit amounting to $13,285.51, the total of $93,116.81.' These employees were employees of the entire system? A. Yes.
>
> "Q. The next item to which I would call your attention is on page 6: 'It is most gratifying to contrast the attitude of some of the employees of the company with the strikes, was the response of the men to the company's invitation to subscribe to the Liberty Loan of 1917 within two weeks of the announcement of the company's partial payment plan of 3,265 subscriptions which have been received from 73%, and investment of bonds to the value of $200,000.' That refers to the employees of the subsidiary companies as well as of the others; as well as of the Third Avenue? A. May I see what you a reading from?
>
> "Q. Yes. 'Subscription to Liberty Loan Bonds.' A. It does.
>
> "Q. They are all treated as employees of the Third Avenue, wi reference to that loan? A. Employees of all the companies."

The company referred to, of which these men were the employe was the Third Avenue Railway Company. In its report the company d not discriminate.

Again, the Third Avenue Railway Company had a printing pla referred to as follows:

> "Q. I find on page 9 of this report this expression: 'The econon cal effect to the operation of its own printing plant has continu during the past year. All of the company's printing has been done its own plant.' That refers to the printing plant which was used f printing matter of not only the Third Avenue Railway Company, b of the subsidiary Companies? A. It does, yes."

As to pensions for employees, the report of the president sai "Under this plan, any employees who have reached the age of seven years after at least twenty years service with the company, or who ha reached the age of sixty-five and have been incapacitated are eligible f pensions," etc. That the company referred to was the Third Avenue Ra way Company appears from this testimony:

> "Q. You had a system of pensions for the employees, didn't yo A. Yes.
>
> "Q. That was entirely under the control of the Third Aven Railway Company, wasn't it? A. Yes.
>
> "Q. Which handled that entirely; is that right? A. Yes."

The executive officers, above referred to, were paid by the checks the Third Avenue Railway Company; the general manager of the enti system had charge of the superintendents of operation, who in turn h control of the conductors and motormen, all of whom reported to a ce tral school for instruction; repairs and construction were operated fro a single department; the cars of both the Third Avenue Railway Cor pany and the Forty-second Street Railway Company were mark "Third Avenue Railway System;" the Third Avenue Railway Compa contracted and paid for the electricity to be used in the system; the was one common purchasing agent, and it is conceded that the Thi Avenue Railway Company in the first instance paid the bills for all ge eral and miscellaneous expenses, including salaries of claim agents a expenses for services and for material purchased. The Third Aven Company owned all the cars which were operated over the lines of t system. One paymaster for the entire system, with assistants, paid t motormen and conductors of the Forty-second Street Railway Compa with cash obtained at the bank by checks drawn by Mr. Sage, who w

the treasurer of the Third Avenue Railway Company and the Forty-second Street Railway Company. The testimony of this point is as follows:

"Q. How many paymasters were there for the whole system? A. I think there was one so-called paymaster, possibly two assistants.

"Q. And they were employees of the Third Avenue Railway Company? A. They were paid out of the Third Avenue Railway Company's general fund.

"Q. Was there any such department in the Forty-second Street and Manhattan Railway Company pay department? A. No. * * * They were employees just as much of the 42nd Street company as they were of the Third Avenue. * * *

"Q. Who pays that paymaster and his subordinates? A. The paymaster was paid out of the Third Avenue Company's fund."

The legal department for the adjustment and settlement of claims and the claims themselves were paid by the Third Avenue Railway Company. So, too, the accounting department was for the entire system paid by the Third Avenue Railway Company. Walter Farrington, the general auditor, testified as to the advertising:

"Q. Do you know where the money for that advertising came from, from the various advertisements? A. Yes.

"Q. Who was it paid to? A. It was paid to the Third Avenue Railway."

Ely M. T. Ryder, engineer of the Forty-second Street Railway Company, swore that the annual report of that company states that the road was held in joint title by the Third Avenue Railway Company and the Forty-second Street Railway Company.

"Q. What does that mean, joint title? A. That is the title to the ownership of the road, which has nothing to do with maintenance.

"Q. Then the ownership of the road is jointly in the two companies; is that right? A. It is so stated.

"Q. Will you go a little further and read the next section, 'Operated jointly with,' and say whether the same statement is not made there? A. It states, 'Operated jointly with.'

"Q. That means the joint operation of the two, does it not? A. Yes.

"Q. Do you still adhere to your former statement that it was operated alone by the Forty-second Street and Manhattanville Railway Company? A. I did not say that it was operated alone, but it was maintained by the Forty-second Street.

"Q. You admit that it is jointly owned, jointly operated, but that you say that it is jointly—it is maintained solely by the one road? A. Correct."

These being the facts regarding the maintenance and operation of the Third Avenue Railway System, what is our conclusion? Is it that the Forty-second Street Railway Company maintained a separate and distinct existence as a corporation operating its railroad as a corporate entity under the guidance and control of its own officers and board of directors? Such to my mind would be an absurd conclusion, especially in the face of the declarations of the Third Avenue Railway Company through its officers. They certainly know the facts, and it is the facts, and the facts alone which the law seizes upon to form and to justify its conclusion. These facts are that the Third Avenue Railway Company owned and controlled the Forty-second Street Railway. It dominated its entire existence. It not only owned the majority of the stock; it owned nearly all of its bonded and floating indebtedness. It officered it with its own officers; it executed the work and the service by its own executives; it paid the employees, including motormen and conductors, by and through its own paymaster; it bought and paid for all materials, supplies and operating facilities. Every activity as an operating railroad was dominated, controlled and executed by the Third Avenue Railway Company, its officers and employees. Ryder, the engineer, had it right when he said that both railroads jointly owned and operated this branch of the system.

These are the facts which cannot be changed by mere bookkeeping entries. It is true that the Forty-second Street Railway Company made out separate reports required by law; that it existed as a corporation; that it owned the street franchise; that upon the books of the Third Avenue Company charges were made for the various services and expenses to the Forty-second Street Railway Company as though it were in reality an independent, vital organism. But all these things cannot hide the reality or cover up the fact that the Third Avenue Railway Company in operation, in control, in dominance, in execution and in the furnishing of service to the city of New York was the Forty-second Street Railway Company.

No facts could exist which would justify the application of the statement in the *Davis Case* (*supra*), if these facts did not. "Where one railroad company actually controls another and operates both as a single system, the dominant company will be liable for injuries due to the negligence of the subsidiary company." Such was the rule with which I commenced this opinion, as laid down in *Davis* v. *Alexander* by the United States Supreme Court, and such is the law which must be applied to the Third Avenue Railway Company in this case. Its activities fit it exactly. * * * A quotation may not be inapt at this point.

"Much emphasis is laid upon statements made in various decisions of this court that ownership, alone, of capital stock in one corporation by another, does not create an identity of corporate interest between the two companies, or render the stockholding company the owner of the property of the other, or create the relation of principal and agent or representative between the two. * * *

"While the statements of the law thus relied upon are satisfactory in the connection in which they were used, they have been plainly and repeatedly held not applicable where stock ownership has been resorted to, not for the purpose of participating in the affairs of a corporation in the normal and usual manner, but for the purpose, as in this case, of controlling a subsidiary company so that it may be used as a mere agency or instrumentality of the owning company or companies." [Chicago, M. & S. P. R. Co. v. Minneapolis Civic & Commerce Ass'n, 247 U.S. 490, 500–501 (1918)].

The attorney for the appellant, with his customary fairness and frankness, admits that some * * * authorities are directly against his contention, and he relies upon our ruling in *Stone v. Cleveland, C., C. & St. L. Ry. Co. (202 N. Y. 352); Elenkrieg v. Siebrecht (238 N. Y. 254),* and *Doran v. N. Y. City Interborough Ry. Co. (239 N. Y. 448)* as supporting his view, and as conflicting with these [other] authorities. The *Stone* case I have already referred to. It follows *Peterson v. Chicago, Rock Island & Pac. Ry. Co. (205 U.S. 364)* in holding that mere stock ownership and control is not sufficient to make the one company liable for the other, its subsidiary. The facts in this case go much further than the facts in the *Stone* case, as I have already explained. *Elenkrieg v. Siebrecht (238 N. Y. 254)* dealt with real property owned by a corporation. It was there shown that the corporation and not the stockholder was liable for the care and maintenance of the real property. The corporation was in actual control as much as any corporation can be and had engaged its authorized real estate agent to look after the property. We held that the fact that the principal stockholder had previously owned the real property which he conveyed indirectly to the corporation did not make him liable for the neglect of this agent. Here also was a question regarding control or dominance, a question of degree. * * *

BARTLE v. HOME OWNERS COOPERATIVE, INC.

Court of Appeals of New York.
309 N.Y. 103, 127 N.E.2d 832 (1955).

Froessel, J. Plaintiff, as trustee in bankruptcy of Westerlea Builders, Inc., has by means of this litigation attempted to hold defendant liable for the contract debts of Westerlea, defendant's wholly owned subsidiary. Defendant, as a co-operative corporation composed mostly of veterans, was organized in July, 1947, for the purpose of providing low-cost housing for its members. Unable to secure a contractor to undertake construction of the housing planned, Westerlea was organized for that purpose on June 5, 1948. With building costs running considerably higher than anticipated, Westerlea, as it proceeded with construction on some 26 houses, found itself in a difficult financial situation. On January 24, 1949, the creditors, pursuant to an extension agreement, took over the construction responsibilities. Nearly four years later, in October, 1952, Westerlea was adjudicated a bankrupt. Meanwhile, defendant had

contributed to Westerlea not only its original capital of $25,000 but additional sums amounting to $25,639.38.

Plaintiff's principal contention on this appeal is that the courts below erred in refusing to "pierce the corporate veil" of Westerlea's corporate existence; as subordinate grounds for recovery he urged that the defendant equitably pledged its assets toward the satisfaction of the debts of the bankrupt's creditors, and that the doctrine of unjust enrichment should apply.

The trial court made detailed findings of fact which have been unanimously affirmed by the Appellate Division, which are clearly supported by the evidence, and by which we are bound. It found that while the defendant, as owner of the stock of Westerlea, controlled its affairs, the outward indicia of these two separate corporations were at all times maintained during the period in which the creditors extended credit; that the creditors were in no wise misled; that there was no fraud; and that the defendant performed no act causing injury to the creditors of Westerlea by depletion of assets or otherwise. The trial court also held that the creditors were estopped by the extension agreement from disputing the separate corporate identities.

We agree with the courts below. The law permits the incorporation of a business for the very purpose of escaping personal liability * * * Generally speaking, the doctrine of "piercing the corporate veil" is invoked "to prevent fraud or to achieve equity" (*International Aircraft Trading Co. v. Manufacturers Trust Co., 297 N.Y. 285, 292)* * * * But in the instant case there has been neither fraud, misrepresentation nor illegality. Defendant's purpose in placing its construction operation into a separate corporation was clearly within the limits of our public policy.

The judgment appealed from should be affirmed, without costs.

* * *

Van Voorhis, J. (dissenting). The judgment of the Appellate Division should be reversed on the law, as it seems to me, and plaintiff should have judgment declaring defendant to be liable for the debts of the bankrupt, Westerlea Builders, Inc., and that defendant holds its real property subject to the claims of creditors of Westerlea. Not only is Westerlea a wholly owned subsidiary of defendant Home Owners, having the same directors and management, but also and of primary importance, business was done on such a basis that Westerlea could not make a profit. Home Owners owned a residential subdivision; Westerlea was organized as a building corporation to erect homes for stockholders of Home Owners upon lots in this tract. Home Owners arranged with Westerlea for the construction of houses and then would sell the lots on which such houses had been erected to Home Owners' stockholders—at prices fixed by Home Owners' price policy committee in such amounts as to make no allowance for profit by Westerlea. The object was to benefit Home Owners' stockholders by enabling them to obtain their houses at cost, with no builder's profit.