

**In the United States Bankruptcy Court
for the
Southern District of Georgia
Brunswick Division**

In the matter of:)	
)	Adversary Proceeding
LARRY ANTHONY BRUCE)	
(Chapter 13 Case Number <u>02-20691</u>))	Number <u>02-2032</u>
)	
<i>Debtor</i>)	
)	
)	
LARRY ANTHONY BRUCE)	
)	
<i>Plaintiff</i>)	
)	
v.)	
)	
CIT GROUP, INC.)	
)	
<i>Defendant</i>)	

**ORDER ON PLAINTIFF’S COMPLAINT
FOR RECOVERY OF ESTATE PROPERTY**

This adversary proceeding was filed June 24, 2002. The plaintiff is a Chapter 13 debtor who seeks to recover from the defendant certain heavy construction equipment pledged by the plaintiff’s wholly-owned corporation as collateral securing a corporate loan from the defendant. The defendant asserts that the equipment at issue is property only of the Chapter 11 bankruptcy estate of the plaintiff’s wholly-owned incorporated business, and that there is no basis for entertaining a turnover action of the equipment in that it does not constitute property of the debtor’s individual bankruptcy estate. Because the loss of the equipment allegedly causes

irreparable harm to the plaintiff, who personally guaranteed the corporate loan, the plaintiff sought and was granted an expedited hearing which was conducted on July 11, 2002.

This Court has jurisdiction over this core matter pursuant to 11 U.S.C. § 157(b). Having considered the arguments and examined the authority cited by the parties, I make the following Findings of Fact and Conclusions of Law in accordance with the directives of Bankruptcy Rule 7052.

FINDINGS OF FACT and CONCLUSIONS OF LAW

Bruce Construction Company (“the corporate debtor”) filed a Chapter 11 case in which it asserted ownership interest in a Caterpillar excavator model 330BL (“the excavator”) and other heavy equipment, all of which were pledged to CIT Group, Inc. (“CIT”). In October 2001, this Court entered a Consent Order providing for adequate protection payments. The corporate debtor subsequently defaulted, and this Court entered an Order granting stay relief to CIT on March 7, 2002.

On May 23, 2002, Plaintiff Larry Anthony Bruce (“Plaintiff”) filed a Chapter 13 case and now asserts an equitable interest in all of the equipment that was repossessed after that filing. The repossession of the excavator having occurred post-petition, the repossession is immediately subject to being set aside by this Court as a violation of the provisions of 11 U.S.C. § 362, provided that Plaintiff can establish that the excavator was in fact property of his Chapter 13 estate. Plaintiff must make this required threshold showing in order to prevail even on an interim basis. Because the matter before me was set for a hearing on an expedited basis due to the allegation of irreparable harm, the Court entertains relief in the nature of a preliminary injunction.

A determination of whether to grant a preliminary injunction requires the party seeking the injunction to show that, without the grant of the temporary injunction, irreparable harm will follow due to an inadequate remedy at law, and that the party seeking the injunction has a reasonable probability of success on the merits. *E.g.*, Wooten v. First Nat'l Bank, 490 F.2d 1275, 1276 (8th Cir.1974). Here, on consideration of the stipulation of the parties and the authorities cited, I conclude that Plaintiff has not demonstrated the reasonable likelihood of prevailing on the merits at the final meeting.

The authority for Plaintiff's contention that property titled in a corporation can be considered estate property of the individual who owns one hundred percent of the stock of the corporation is not persuasive. The issue in In re Moses, 225 B.R. 360 (E.D. Mich. 1998), upon which decision Plaintiff primarily relies, was whether a bankruptcy court in an individual's involuntary Chapter 11 case had jurisdiction to authorize distribution of that individual's wholly-owned corporation's assets to the individual's creditors. *See id.* at 364 (justifying propriety of bankruptcy court jurisdiction in part because debtor's ownership of 100% of corporation's stock meant that, under 11 U.S.C. § 541(a)(1), corporation constituted "legal or equitable interest" of individual bankrupt debtor). While language in that opinion supports the proposition that Plaintiff's equity in his wholly-owned corporation is an asset of his Chapter 13 estate, it does not establish that every asset owned by the corporation is in fact property of his Chapter 13 estate.

More importantly, the law of Georgia does not support Plaintiff's position. Defendant relies on authority from this state which iterates the well-established and time-honored rule in Georgia that a corporation and its one-hundred-percent shareholder are separate and distinct legal entities unless the corporate veil is pierced. *See Hogan v. Mayor & Aldermen of Savannah*,

320 S.E.2d 555, 558, 171 Ga. App. 671, 673 (1984) (“Generally, in Georgia a person may own all the stock of a corporation and still such individual shareholder and the corporation would, in law, be two separate and distinct persons.”). The corporate veil is not pierced except “to remedy injustices which arise where a party ‘has over extended his privilege in the use of a corporate entity in order to defeat justice, perpetuate fraud or to evade contractual or tort responsibility.’ ” *E.g.*, id. (quoting Kelley v. Austell Bldg. Supply, Inc., 297 S.E.2d 292, 297, 164 Ga. App. 322, 326 (1982)). Thus, the mere fact that Plaintiff is the sole shareholder in his wholly-owned corporation would not have been sufficient to pierce the corporate veil for the purpose of seeking to satisfy the corporation’s debts by using Plaintiff’s individual assets. Similarly, there is no justification for allowing Plaintiff to “reverse pierce” the corporate veil. *See Hogan*, 320 S.E.2d at 557-58 (finding no authority under Georgia law for “reverse pierce,” defined as “allowing an ‘insider’ to pierce the corporate veil from within the corporation”).¹

Absent controlling legal authority reversing these principles of Georgia law, I conclude that Plaintiff has failed to show a reasonable likelihood of prevailing on the merits at any final hearing. Accordingly, the request for turnover on an expedited basis is DENIED inasmuch as it does not meet the standards for the issuance of a preliminary injunction. The parties will be afforded until September 1 to conduct any discovery and to file supplemental briefs on their positions with the Court and a final trial of this adversary proceeding will be conducted during the September term of Court at a date and time to be set by separate notice.

¹ In fact, under the circumstances of this case, the timing of Plaintiff’s filing and his attestation as to the truth and accuracy of his corporation’s Chapter 11 schedules, which failed to disclose any ownership interest in the subject collateral other than that of the corporate entity, are equities weighing against allowing any type of veil-piercing.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of July, 2002.