

VERDICTS & SETTLEMENTS

Attorneys Follow Money Trail Over Unpaid Loan

by Celia Ampel
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It's not easy to hold shareholders liable for a company's debts. In fact, lawyers fail at it about 80 percent of the time, said Kozyak Tropin & Throckmorton partner Javier Lopez.

"Anybody can go on Sunbiz.org and create an LLC in probably 20 minutes, and you can benefit from protection of the company," the Coral Gables lawyer said. "That's what the law wants: to be able to protect yourself from individual liability."

But Lopez and his team succeeded in piercing the corporate veil, winning a \$15 million verdict for a Venezuelan lender

Antonio Quercia et al v. Juan Curbelo et al

Case no.: 13-15713-CA-01

Description: Fraudulent transfer

Filing date: May 1, 2013

Verdict date: March 1, 2016

Judge: Miami-Dade Circuit Judge John Thornton

Plaintiffs attorneys: Javier Lopez, Dyanne Feinberg and Gail McQuilkin, Kozyak Tropin & Throckmorton, Coral Gables

Defense attorneys: Porpoise Evans and Paul Turner, Perlman, Bajandas, Yevoli & Albright, Fort Lauderdale

Verdict amount: \$15 million



A.M. HOLT

Javier Lopez, Gail McQuilkin and Dyanne Feinberg won a \$17 million judgment against a man accused of transferring money from one company to another to avoid repaying a loan.

who accused a borrower of moving money around to avoid repayment.

The borrower, Miami-based Agritrade, exported corn, soybeans, wheat and other crops. The company lost so much money in 2011 buying farms and mills that it went out of business, according to lender Antonio Quercia's May 2013 complaint in Miami-Dade Circuit Court.

Juan Curbelo, who Quercia alleged "exercises complete control and dominion" over Agritrade's business decisions, told employees to start looking for third-party loans. His plan was to transfer the money to his own wholly owned alter-ego corporations and cease Agritrade operations before any loans came due, Quercia claimed.

Agritrade employee Ruben Sierra met with Quercia to ask for a loan, telling him the company was in good financial shape, according to the complaint. The \$15 million loan was executed in March 2012 in a one-page, two-sentence agreement.

"Here in the U.S., a \$15 million loan probably has an inch of loan paperwork," Lopez said. The lender and borrower knew each other personally for 25 years, and Quercia trusted Curbelo.

Repayment was due in December 2012. By the following March, Agritrade had paid just \$5.5 million. Then Curbelo transferred Agritrade funds — more than the owed \$9.5 million — to alter-ego corporations such as Galo Group Ltd., and Agritrade became insolvent, ac-

ording to the complaint.

Quercia sued Curbelo and his companies for breach of contract, breach of promissory note, unjust enrichment and fraud in the inducement.

During a seven-day trial before Miami-Dade Circuit Judge John Thornton, Curbelo's lawyers argued the businessman was a shareholder, and shareholders are generally not liable for the demise of a corporation.

"But he was more than just a shareholder," said Kozyak Tropin attorney Dyanne Feinberg, who assisted Lopez at trial. "He was the controlling shareholder. He had veto power. The corporation paid money to his family members. He was actually benefitting from the corporation. We were able to show that he had domination and control."

Curbelo also told other Agritrade board members not to repay the debt even though they wanted to, Feinberg said. And the plaintiff showed the jury bank documents showing Curbelo had almost \$40 million in the bank, more than enough to repay the loan.

"That didn't add up for the jury," Lopez said.

Curbelo attorney D. Porpoise Evans of Perlman, Bajandas, Yevoli & Albright in Fort Lauderdale said he and his co-counsel tip their hats to the plaintiffs lawyers for "convincing the jury to adopt a novel theory of liability."

"The underlying summary judgment claims on which the jury based its award already are

on appeal to the Third [District Court of Appeal], and we anticipate an appeal of the verdict here as well," Evans said in an email. "We have already moved to set aside the verdict on specific legal grounds, including the fact that the pure compensatory award inexplicably exceeded the claimed damages."

The jury found March 1 that Agritrade transferred funds to Galo to "delay, hinder or defraud" Quercia and his company, Agro Supply. Finding that Galo was Curbelo's alter ego, the jury awarded Quercia \$15 million plus about \$2 million in interest for unjust enrichment.

The jury also awarded \$9.5 million in damages on the fraudulent transfer claim, but Quercia can recover only the higher amount because the two awards relate to the same conduct.

Lopez said he was satisfied the jury understood Curbelo was a "puppeteer" and not just a shareholder in Agritrade.

"When you start violating the corporate formalities and start treating it like your personal piggy bank, that's when you expose yourself to liability," he said.

Quercia was represented by Lopez, Feinberg and Gail McQuilkin of Kozyak Tropin.

Curbelo was represented by Evans and Paul Turner of Perlman, Bajandas, Yevoli & Albright in Fort Lauderdale.

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