

Cathode Ray Tubes/Warehouse: Federal Court Addresses Superfund Corporate Veil Piercing Issue



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The United States District Court for the Southern District of Ohio (“Court”) addressed in a November 13th Order an issue arising out of a Comprehensive Environmental Response Compensation and Liability Act (“CERCLA”) or Superfund cost recovery action. See *Garrison Southfield Park LLC v. Closed Loop Ref. and Recovery Inc.*, No. 2:17-cv-783, 2019 WL 5962684, slip copy (S.D. Ohio Nov. 13, 2019).

The action stems from the alleged improper disposal of electronic waste in a leased warehouse.

The plaintiff, Garrison Southfield Park (“Garrison”), initially filed suit alleging that multiple defendants caused environmental contamination at two of Garrison’s warehouses in Columbus, Ohio. According to Garrison, the warehouses contain more than 64,000 tons of hazardous electronic waste.

Moshe Silagi, was the former managing member of MS-South, LLC, the company that sold the warehouses to Garrison. An option was provided to lease the other warehouse.

Garrison alleges that under the lease agreement, Closed Loop was required to comply with federal and state hazardous waste laws.

The Complaint notes that the Resource Conservation and Recovery Act (“RCRA”) regulates CRT recycling. A conditional exclusion for legitimate CRT recycling operations is provided if certain criteria are met.

Closed Loop allegedly misrepresented that it qualified for the conditional exclusion by processing CRTs through disassembly and glass breaking but then storing most of the crushed CRT glass in one of the warehouses. According to Garrison, Closed Loop improperly accumulated massive amounts of crushed CRT glass and intact CRTs at the warehouses.

Defendant Silagi allegedly exercised total control over MS-South and made misrepresentations to Garrison in connection with the sale of the warehouses. These allegedly included the claim that the properties were not used for storage, treatment, or disposal of hazardous substances. Further, Silagi dissolved MS-South in an effort to avoid liability, according to Garrison.

Garrison brought claims under CERCLA.

Silagi moved to dismiss for failure to state a claim.

Silagi argued that Garrison failed to plead one of the elements of a CERCLA claim—that Silagi is a potentially responsible party (i.e., “PRP”) under Section 107 of the statute. Silagi’s specific contention was

that Garrison failed to plead sufficient facts to plausibly pierce MS-South's corporate veil and hold Silagi personally liable.

State law controls issues on piercing the corporate veil in CERCLA claims. Therefore, the Court looked to Ohio law.

There is a three-prong test for determining whether the corporate veil has been pierced. Individual shareholders may be held personally liable when:

- (1) control over the corporation by those to be held liable was so complete that the corporation has no separate mind, will, or existence of its own,
- (2) control over the corporation by those to be held liable was exercised in such a manner as to commit fraud or an illegal act against the person seeking to disregard the corporate entity, and
- (3) injury or unjust loss resulted to the plaintiff from such control and wrong.

The Court found that Garrison adequately pled each of those requirements. With respect to the first prong of the test, the Court noted that Garrison alleged that Silagi was the sole member of MS-South, Silagi signed the lease agreement between MS-South and Closed Loop, Silagi made representations in the purchase and sale agreement between MS-South and Garrison, Silagi was named as the guarantor in the purchase and sale agreement, and Silagi dissolved MS-South. Such allegations were sufficient to meet the first prong.

Regarding the second prong, the Court found that Garrison had sufficiently pleaded a common law fraud claim against Silagi. The complaint alleged Silagi falsely represented that the warehouses had not been used for the storage, treatment, or disposal of hazardous substances; Silagi had knowledge that hazardous waste was being disposed of on the property because he signed the lease agreement; and Silagi falsely represented that he had made due inquiry into the truth of the representations. Garrison justifiably relied on the representations in purchasing the warehouses and, as a result, now owns property with accumulated hazardous waste on it. Accordingly, the second prong was met.

With respect to the third prong necessary to pierce the corporate veil, Garrison alleged that it was stuck with massive cleanup and remediation bills because of Silagi's actions as the sole director of MS-South. Such allegations were sufficient to meet the third prong.

Because Garrison pleaded sufficient facts to make out a plausible claim that the corporate veil should be pierced and, in turn, Silagi was a responsible party under CERCLA, the Court denied Silagi's motion to dismiss.

A copy of the order can be downloaded [here](#).