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# Applying Well-Settled Law to Dismantle the Clogging of the Equities Argument for Dual Collateral Loans

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***In this article, the authors examine whether the defense of "clogging" the mortgagor's right of redemption can be used to derail a non-judicial Uniform Commercial Code foreclosure sale on dual collateral loans.***

With rising interest rates, a volatile stock market, a fall in gross domestic product, global unrest and other troubling indicators, a significant recession appears to be on the horizon. Not surprisingly, credit defaults and concomitant foreclosures are increasing throughout the country.

As these defaults continue to rise, certain lenders who made what are colloquially referred to as "dual collateral loans" will be seeking to enforce their rights under their loan documents. Dual collateral loans are, simply put, loans secured by both a mortgage on real property and a pledge of the ownership interests in the mortgagor entity that owns such property. Following a loan default, the lender may seek to exercise its rights under the pledge and sell the ownership interests in the mortgagor entity through a non-judicial Uniform Commercial Code (UCC) foreclosure sale, rather than commence a judicial mortgage foreclosure, because the former is typically more expeditiously completed than the latter. Recently, mortgagors and their owners are more often raising a once-novel theory to delay such UCC sales: Namely, that by taking ownership of the mortgagor and, indirectly, control of the mortgaged property, the lender, through a UCC sale, is effectively circumventing the mortgagor's equitable right to avoid foreclosure by paying off the underlying debt—i.e., "clogging" the mortgagor's right of redemption.

Although this theory may appear to have some superficial appeal at first blush, it utterly fails a more comprehensive examination.

Many courts that have had the occasion to examine this theory did so only in the context of a mortgagor's expedited application for

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some emergent injunctive relief, which limited the opportunity for a more comprehensive review of applicable law and the factual nuances of a dual collateral loan.[1]

Others have rejected the theory based solely on a review of the UCC, which provides its own right of redemption, and because the pledge was part of a commercial financing negotiated between sophisticated parties represented by counsel who should be bound to their agreements.[2]

While these decisions are correct, they did not include a comprehensive review of the underlying law, the analysis of which is the objective of this article. This article focuses primarily on New York law, because New York is the forum where most challenges to UCC sales on dual collateral loans have been raised and, thus, where the applicable decisions have been made. However, except where specifically noted, the legal concepts discussed herein are broadly accepted across the United States.

To reach this objective, this article first examines corporate/limited liability company (LLC) law, focusing on the different rights and liabilities of entities and their owners.

Next, it examines the historical background of the equity of redemption and how that right is currently viewed under present law.

Then, this article examines the clogging theory in the context of applicable corporate/LLC law as it relates to dual collateral loans.

Finally, this article looks at the unavoidable consequences of permitting such a theory to prevail in reaching our conclusion that the clogging of the equity of redemption argument is unsupported by established law and would lead to severe consequences if applied to dual collateral loans.

## I. Corporate/LLC Law

Corporations and LLCs (herein collectively referred to as entities) are fictitious entities created to, among other things, provide liability protection to the shareholders/members (herein collectively referred to as owners) involved with such entities.[3] Generally speaking, the law shields owners from their entities' liabilities, regardless of whether the origin of any such liability is statutory, tort-based or contractual.[4] For example, a contract entered into by an entity cannot be enforced against the entity's owners.[5]

However, the fact that these entities are fictitious does not equate to their being nonexistent. Corporations and LLCs do, in fact, exist in the eyes of the law. As a result, each such entity is deemed to wholly own its assets.[6] In turn, a business entity's owner has no ownership interest in the entity's specific assets solely because it owns an interest in the entity.[7]

For this same reason, an entity's owner's creditors may not seek to realize upon any judgment obtained against the owner by levying upon the entity's specific assets.[8] To the contrary, under typical state law, an owner's creditor may seek to realize upon the owner's distributions from an LLC business entity only through a charging order,[9] or seek the turnover of an owner's shares in an LLC, subject to the LLC's governing documents.[10] Similarly, a money judgment entered against an entity cannot be executed against the personal bank accounts of that entity's owners.[11]


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In other areas of the law, the separate legal identities of entities and their owners is also recognized. For example, corporations and LLCs are obligated to file their own tax returns separate and apart from their owners.[12] Indeed, the U.S. Supreme Court has even recognized that corporations exist separate and apart from their owners by acknowledging that First Amendment freedom of speech protections extend to such non-natural entities.[13]

Hence, the separate identities of owners from their business entities is well-established in American jurisprudence.

## II. Redemption Rights in Mortgaged Property

The equitable right of redemption (or the "right to redeem") is an equitable right inherent in every mortgage.[14] The right to redeem is a creature of law, not contract. Consequently, this right cannot be waived or abandoned by contractual language,[15] nor overlooked merely by way of a mortgagor's ignorance of such right.[16] A purported contractual waiver, or circumvention of the right of redemption, has been called a "clog" of the equity of redemption.[17]

Generally speaking, the right to redeem extends to any person who holds a legal or otherwise recognizable interest directly in the mortgaged property itself (herein referred to as an "interest holder").[18] Such an interest holder maintains the right to redeem until such time that there is foreclosure of the mortgage (and other times even after foreclosure, as provided in the applicable particular state law).[19]

By way of the right to redeem, the interest holder is provided a last chance to protect its property interest in the mortgage property by paying off unpaid indebtedness up until the equity of redemption expires.[20] This, in turn, allows the interest holder to satisfy the indebtedness and thus maintain its interest in the mortgaged property, where the interest holder would otherwise have lost such interest upon failure to pay.[21] A mortgagor is traditionally understood to be an interest holder; that is, an individual/entity who has an ownership interest in the mortgaged property itself and would lose that interest if the property was foreclosed upon.[22] With respect to mortgage foreclosures, the exact rights of the right of redemption are governed by state law.[23]

While each state is unique and such laws should be carefully examined, the right of redemption is typically said to be extinguished after a set period of time following a defined event that terminates the relevant interest (e.g., a foreclosure sale of the mortgage property). Under New York law, for example, the right of redemption, once lost, may not be revived.[24]

## III. Under Well-Settled Corporate Law, the Clogging Argument Fails

Advocates of the clogging theory argue that when a lender of a dual collateral loan exercises its rights under the pledge and causes a sale of the ownership interests in a mortgagor entity, and such a sale effectuates a change in the ownership of the mortgagor entity, it results in either a loss or impairment of the mortgagor's right of redemption in the real estate.

In reality, however, these rights and obligations affect different legal entities, separately recognized under corporate law. In a dual collateral loan, although the mortgage is given by the mortgagor/borrower, the pledge of owner-


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ship interests in the mortgagor entity is given by the pledgors/owners of the mortgagor entity. When a lender enforces a pledge against the owners of the mortgagor entity, the mortgagor entity's ownership of the mortgaged property is wholly uninterrupted. Indeed, the ownership of the real property does not change and remains in the name of the mortgagor entity. Specifically, if a pledgor (Pledgor) owns the mortgagor entity (Mortgagor), and the Mortgagor owns the real estate, when the Pledgor is foreclosed out of its interest in Mortgagor via UCC sale by a lender (Lender) who becomes the new owner of Mortgagor, the Mortgagor continues owning the real estate, even though Lender now owns Mortgagor.

Thus, for this clogging theory to work, a court must do one of two things. First, the court must conflate the separate legal identities of the Mortgagor (the entity that owns the real property) and the Pledgor (the owners of the Mortgagor) such that the owners' loss of ownership of the Mortgagor equates to a loss of ownership of the mortgaged property without a right of redemption.[25] But such a conflation is contrary to the well-settled law that the Pledgor and the Mortgagor are separate legal entities, with the Pledgor having no direct interest in the mortgaged property that would give rise to their having their own right of redemption under the mortgage.

Alternatively, the court must permit the Pledgors to "inside reverse pierce" the corporate veil to enable them to disregard the corporate or LLC structure and assert a direct interest in the mortgaged property.[26] However, the largely frowned-upon inside reverse corporate piercing doctrine is not applied by courts where the owners, who have benefited from the corporate or LLC structure, later seek to deny that structure when it works to their detriment or disadvantage.[27] Pledgors under a dual collateral loan are precisely the type of insiders who, having benefited from the ownership structure, may not later try to deny it to assert a legal argument. Such insiders created the mortgagor's corporate or LLC structure to protect their own assets and insulate themselves from a variety of claims, including property-related liabilities and even their lender's claims, as evidenced by the limited and "bad boy"-type guaranties such insiders often provide in conjunction therewith. They also have affirmed the corporate/LLC structure in financial statements, acknowledgements, resolutions and attorney opinion letters that lenders typically require as preconditions to financing.

For these reasons, such owners should not be permitted to reverse-pierce and be deemed legal owners of the mortgaged property, which they specifically did not acquire in their own names. And as a result, when the clogging theory is viewed through the lens of well-settled corporate and LLC law, it has no merit.

## IV. Unavoidable Consequences of Allowing the Clogging Argument

Permitting pledgors to disregard corporate law whenever it suits them but hide behind those same principles when it is to their advantage would undermine the viability of the lending industry.[28]

As previously discussed, it is typical practice in the commercial mortgage lending industry to require borrower entities and their ownership to, among other things, demonstrate the corporate ownership structure of the real property and the mortgagor, acknowledge that the


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mortgagor and its owners have the appropriate authority to enter into the loan transaction, pass various resolutions approving financing, and provide opinions of counsel to verify the legality of the relevant corporate structures. Such representations and warranties exist in the formation of loan transactions in order to, among other things, provide safeguards to lenders and ensure that the industry does not become fraught with fraud. To a similar extent, lenders will generally rely upon a mortgagor's representations and covenants set forth in the underlying mortgage and other loan documents to establish a mutual understanding of the transaction between the parties, and lenders rely on the veracity of applications, resolutions, loan documents and opinions of counsel in approving and disbursing loans.

Lenders similarly rely upon Article 9 of the UCC, which governs the sale of personalty, in making and enforcing loans, including those provisions that apply to sales of ownership interests and the right of redemption with respect to such sales.[29] It would undermine the very purpose of having a uniform code of commercial law to graft onto the applicable UCC provisions new rights that are contrary to established law and allow a pledgor who owns interests in a mortgagor entity to essentially to convert collateral that is personalty—such as ownership interests in an LLC—into interests in real property to which the UCC does not apply whenever it is convenient to them. Further, the UCC has its own redemption provision such that there is no need to judicially create new ones that would only serve to undermine the UCC's well-designed provisions.

Separately, federal and state criminal statutes exist to protect the lending industry from fraudulent activity in connecting with the procurement of loans. Permitting borrowers and their owners to change the facts surrounding their existence and operation in violation of the representations they made in procuring their loans is exactly the type of conduct these statutes were implemented to protect against.

## Conclusion

While the clogging of the equities theory is a creative argument, it is also a severely flawed one when properly viewed through well-settled law. Courts have already refused to permit borrowers and their owners to frustrate the exercise of bargained-for rights, particularly where there are existing protections for such borrowers and their owners in the well-structured Uniform Commercial Code.

But as discussed herein, permitting them to upend corporate law principles would further undermine the lending industry and exacerbate the effects of any recession.

Rather, if borrowers and their owners wish to avoid the consequences of a default under a dual collateral loan arrangement, they simply shouldn't enter into one in the first place. Once they do, they should feign neither surprise nor outrage when their lender exercises the rights such borrowers and their owners willingly gave in exchange for the loan proceeds they have already spent.

### NOTES:

[1]See *HH Cincinnati Textile L.P. v. Acres Capital Servicing LLC*, 2018 WL 3056919, *2 (N.Y. Sup 2018) (order denying preliminary injunction); *HH Mark Twain LP v. Acres Capital Servicing LLC*, 2020 WL 2857649, *2 (N.Y. Sup 2020) (holding that a preliminary injunction is a provisional remedy and not a ruling on the merits on the claim of clogging of equities).


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[2]See Transcript of Oral Argument held on November 16, 2021 at 16–20, *Atlas Brookview Mezzanine LLC v. DB Brookview LLC*, Index No. 653986/2020 (Sup. Ct. N.Y. Cnty. Nov. 16, 2021); *893 4th Ave. Lofts LLC & Michael UHR v. 5AIF Nutmeg, LLC*, 2020 WL 6940968 (N.Y. Sup 2020).

[3]See N.Y. Ltd. Liab. Co. Law § 609 et seq. (McKinney 2022).

[4]See *Matias ex rel. Palma v. Mondo Properties LLC*, 43 A.D.3d 367, 367–68, 841 N.Y.S.2d 279 (1st Dep't 2007) ("A member of a limited liability company 'cannot be held liable for the company's obligations by virtue of his [or her] status as a member thereof[.]' ") (citations omitted); *Panasuk v. Viola Park Realty, LLC*, 41 A.D.3d 804, 805, 839 N.Y.S.2d 520 (2d Dep't 2007) ("A member of a limited liability company may not be held personally liable on contracts entered into by his or her company, provided he or she did not purport to bind himself or herself individually under such contracts . . .").

[5]See *In re D & B Const. of Westchester, Inc.*, 21 Misc. 3d 1125(A), 875 N.Y.S.2d 819 (Sup 2008) ("[I]t [is] well settled that an agent who signs on behalf of a known principal cannot be held to have made a commitment in his or her individual capacity[.]").

[6]See *5303 Realty Corp. v. O & Y Equity Corp.*, 64 N.Y.2d 313, 323, 486 N.Y.S.2d 877, 476 N.E.2d 276, 48 A.L.R.4th 715 (1984) ("It is well settled that the property interests of a shareholder and the corporation are distinct."); *Yonaty v. Glauber*, 40 A.D.3d 1193, 1195, 834 N.Y.S.2d 744 (3d Dep't 2007) ("[T]he corporation itself owns its assets, such as real property, while the shareholders merely own the stock, which is personal - not real - property[.]"); N.Y. Ltd. Liab. Co. Law § 601 (McKinney 2022) ("A membership interest in the limited liability company is personal property. A member has no interest in specific property of the limited liability company.").

[7]See *Angelino v. Francis J. Angelino, D.D.S., P.C.*, 83 A.D.3d 1186, 1188, 921 N.Y.S.2d 367 (3d Dep't 2011) ("[T]he individual defendants, the LLC and the corporation are distinct entities, not generally liable for the debts of each other . . . Money in the possession of the corporation is not considered money in the possession of individuals involved with that entity, or in the possession of the LLC controlled by those same individuals.").

[8]See N.Y. Ltd. Liab. Co. Law § 607(b) (McKinney 2022) ("No creditor of a member shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the limited liability company."); *Edrington v. Richman*, 260 A.D. 46, 47, 20 N.Y.S.2d 717 (1st Dep't 1940), judgment aff'd, 286 N.Y. 598, 35 N.E.2d 938 (1941) ("A creditor may resort only to such property as belongs to the debtor and may not reach property rightfully belonging to others though held by the debtor.").

[9]See N.Y. Ltd. Liab. Co. Law § 609 (McKinney 2022); *Born to Build, L.L.C. v. Saleh*, 43 Misc. 3d 1213(A), 988 N.Y.S.2d 521 (Sup 2014) ("A plain reading of Sections 603(a) and 607 of the Limited Liability Company Law make it clear that, at best, a creditor . . . may only obtain an interest in a member's share of the profits and losses of a limited liability company, not the membership interest itself.").

[10]See N.Y. Ltd. Liab. Co. Law § 603 ("Except as provided in the operating agreement, [] a membership interest is assignable in whole or in part[.]"); N.Y. Ltd. Liab. Co. Law § 607(a) ("On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the membership interest of the member with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the membership interest."); *Sirotkin v. Jordan, LLC*, 141 A.D.3d 670, 671, 35 N.Y.S.3d 443 (2d Dep't 2016) ("A membership interest in a limited liability company is 'clearly assignable and transferrable,' and, therefore, such interest is 'property' for purposes of CPLR article 52[.]").

[11]See *Letizia v. Executive Coach Auto Repair, Ltd.*, 213 A.D.2d 382, 382, 623 N.Y.S.2d 327 (2d Dep't 1995).

[12]See *Moline Properties v. Commissioner of Internal Revenue*, 1943 C.B. 1011, 319 U.S. 436, 439, 63 S. Ct. 1132, 87 L. Ed. 1499, 43-1 U.S. Tax Cas. (CCH) P 9464, 30 A.F.T.R. (P-H) P 1291 (1943) ("The doctrine of corporate entity fills a useful purpose in business life. Whether the purpose be to gain an advantage under the law of the state of incorporation or to avoid or to comply with the demands of creditors or to serve the creator's personal or undisclosed convenience, so long as that purpose is the equivalent of business activity or is followed by the carrying on of business by the corporation, the corporation remains a separate taxable entity."); *Paymer v. C.I.R.*, 150 F.2d 334, 336, 45-2 U.S. Tax Cas. (CCH) P 9353, 33 A.F.T.R. (P-H) P 1536 (C.C.A. 2d Cir. 1945) ("As a general rule a corporation is a taxpayer separate and distinct from its stockholders . . . And this applies to a corporation wholly owned by one stockholder."); *Deutsche Lufthansa AG v. City of New York*, 85 Misc. 2d 719, 720, 379 N.Y.S.2d 635 (Sup 1976) ("For, as the rulings by the Internal Revenue Service [] cited by plaintiff demonstrate a corporation is treated as separate from its owners for tax purposes[.]").

[13]See *Citizens United v. Federal Election Com'n*, 558 U.S. 310, 342, 130 S. Ct. 876, 175 L. Ed. 2d 753, 187 L.R.R.M. (BNA) 2961, 159 Lab. Cas. (CCH) P 10166 (2010) ("The Court has recognized that First Amendment protection extends to corporations."); *Kingsley Intern. Pictures Corp. v. Regents of University of State of N.Y.*, 360 U.S. 684, 689, 79 S. Ct. 1362, 3 L. Ed. 2d 1512 (1959); *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 777, 106 S. Ct. 1558, 89 L. Ed. 2d 783, 12 Media L. Rep. (BNA) 1977 (1986); *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 64, 96 S. Ct. 2440, 49 L. Ed. 2d 310, 1 Media L. Rep. (BNA) 1151 (1976).

[14]See *Hammerstein v. Henry Mountain Corp.*, 11 A.D.3d 836, 838, 784 N.Y.S.2d 657 (3d Dep't 2004) ("[T]he equity of redemption, or right to redeem the prop-


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erty upon tender of the entire amount due on the loan, is inseparably connected with a mortgage and cannot be waived or abandoned[.]") (citations and quotations omitted); *Sakow v. Bossi*, 30 Misc. 2d 110, 113, 214 N.Y.S.2d 120 (Sup 1961) ("The right to redeem is an essential part of a mortgage and such right will be read into it by law even if no provision for redemption is to be found in the instrument."); *Goodell v. Silver Creek Nat. Bank*, 48 N.Y.S.2d 572, 577 (Sup 1944), judgment aff'd, 268 A.D. 1020, 53 N.Y.S.2d 529 (4th Dep't 1944) (Chautauqua Cnty. Ct.) ("The right to redeem the property or the 'Equity of Redemption,' as it is called, is an incident of every mortgage, and as the legal right of the owner of the land to redeem it from the lien of the mortgage it is a 'favorite equity,' so that strict compliance will be required with the steps necessary to divest it.").

[15]See *Hammerstein v. Henry Mountain Corp.*, 11 A.D.3d 836, 838, 784 N.Y.S.2d 657 (3d Dep't 2004).

[16]See *Republic Financial Corp. v. Mize*, 1983 OK 107, 682 P.2d 207, 217 (Okla. 1983).

[17]See *Lawrence v. Farmers' Loan & Trust Co.*, 13 N.Y. 200, 205, 1855 WL 6875 (1855) ("A right to redeem premises mortgaged is incident to, and inseparable from every mortgage, until such right is released or canceled by the person entitled thereto, or is duly foreclosed or barred. No stipulation or agreement in the mortgage, or between the parties at the time of making it, can it any way destroy, impair or clog this right.").

[18]See *Scharaga v. Schwartzberg*, 149 A.D.2d 578, 579, 540 N.Y.S.2d 451 (2d Dep't 1989) ("The right to redeem extends to those holding any legal or equitable interest in the property derived from the mortgagor . . ."); *Polish Nat. Alliance of Brooklyn, U.S.A. v. White Eagle Hall Co., Inc.*, 98 A.D.2d 400, 405, 470 N.Y.S.2d 642 (2d Dep't 1983).

[19]See *In re Mizuno*, 288 B.R. 45, 48 (Bankr. E.D. N.Y. 2002) ("Once the legal and equitable interests of the debtor are terminated as established by state law, that right is lost.").

[20]See *Luna Lighting, Inc. v. Just Industries, Inc.*, 45 A.D.3d 814, 816, 847 N.Y.S.2d 126 (2d Dep't 2007) ("A mortgagor or other owner of the equity of redemption of a property subject to a judgment of foreclosure and sale may redeem the mortgage at any time prior to the foreclosure sale[.]") (citations omitted).

[21]See, e.g., *LFJ Realty Co. v. Bank of New York*, 31 Misc. 3d 1217(A), 929 N.Y.S.2d 200 (Sup 2011) ("The rationale behind the right to redemption is that a tax lien or mortgage merely serves as security to insure payment of a debt, and that by commencing a foreclosure action, the holder of a tax-lien or mortgage seeks a sale of the property only to satisfy that debt."); *Winberry Realty Partnership v. Borough of Rutherford*, 247 N.J. 165, 185, 253 A.3d 636 (2021) ("The equitable right of redemption also serves to 'protect property owners from forfeiting their homes' when they are able to pay all outstanding taxes, interests, and various costs and expenses before entry of final judgment.").

[22]See *Kolkunova v. Guaranteed Home Mortg. Co., Inc.*, 43 A.D.3d 878, 878, 842 N.Y.S.2d 46 (2d Dep't 2007) ("A mortgagor or other owner of the equity of redemption of a property subject to a judgment of foreclosure and sale may redeem the mortgage at any time prior to the foreclosure sale[.]") (citations omitted). Courts further recognize that tenants, mortgagees, lienholders, and others, may in particular situations hold a legally cognizable property interest such that they can redeem a mortgage. See, e.g., *Goldstein v. Soledad Place Corp.*, 157 Misc. 2d 801, 801, 599 N.Y.S.2d 213 (Sup 1993) ("[A] tenant of the property is clearly a 'person interested in the mortgaged premises[.]' ") (citations omitted).

[23]See *Union County Sav. Bank v. Johnson*, 210 N.J. Super. 589, 595, 510 A.2d 288 (Ch. Div. 1986) ("Initially, it must be conceded that state law determines the existence and extent of the right of redemption after the sale, or at any other point in the foreclosure action."). Of particular note, "[i]t is well-settled that there is no right of redemption under federal law" and therefore there is no basis for a claim of redemption under federal law. *Thwaites Place Associates v. Secretary of U.S. Dept. of Housing and Urban Development*, 638 F. Supp. 301, 303 (S.D. N.Y. 1986), judgment aff'd, 833 F.2d 1003 (2d Cir. 1986).

[24]See *Lehman Commercial Paper, Inc. v. Point Property Co., LLC*, 146 A.D.3d 1192, 1193, 45 N.Y.S.3d 662 (3d Dep't 2017) ("More critically, once lost, the right to redeem cannot be revived, even by court order[.]").

[25]As noted above, some courts have rejected the clogging argument on the grounds that the UCC provides its own right of redemption to pledgors. Specifically, Article 9 of the UCC provides for multiple avenues which parties may take in order to protect their rights during and after the disposition process. See *Atlas MF Mezzanine Borrower, LLC v. Macquarie Texas Loan Holder LLC*, 174 A.D.3d 150, 159, 105 N.Y.S.3d 59, 99 U.C.C. Rep. Serv. 2d 182 (1st Dep't 2019).

[26]See, e.g., *In re Phillips*, 139 P.3d 639, 644–45 (Colo. 2006), in which court noted that insider reverse piercing claims involve a controlling insider who attempts to have the corporate entity disregarded . . . to protect corporate assets from third party claims, citing Gregory S. Crespi, The Reverse Pierce Doctrine: Applying Appropriate Standards, 16 J. Corp. L. 33, 37 (1990).

[27]See *In re ALT Hotel, LLC*, 479 B.R. 781, 801–02 (Bankr. N.D. Ill. 2012), in which the court, applying Delaware law, noted that whether "Delaware would permit the version of inside reverse piercing advanced here - or indeed reverse piercing of any kind - is highly problematic. Courts elsewhere are deeply split on the theory. A 'significant minority' of courts reject outside reverse piercing, 1 Blumberg, supra, Section 14.07[C] at 14–29, and courts 'are overwhelmingly hostile' to inside reverse piercing, id. Section 14.07[B] at 14–22. These courts reason that insiders who benefit from incorporation should not be able to deny corporate existence later on when the corporate form 'works to their detriment or disadvantage.' " citing 1 Fletcher, supra, Section 41.20 at 158; see, e.g., *Liberty Property Trust v. Republic*


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*Properties Corp.*, 577 F.3d 335, 340, Fed. Sec. L. Rep. (CCH) P 95328 (D.C. Cir. 2009); *In re RCS Engineered Products Co., Inc.*, 102 F.3d 223, 226, 30 Bankr. Ct. Dec. (CRR) 26, 37 Collier Bankr. Cas. 2d (MB) 268, Bankr. L. Rep. (CCH) P 77259, 1996 Fed. App. 0382P (6th Cir. 1996); *McCarthy v. Azure*, 22 F.3d 351, 363 (1st Cir. 1994); *In re Rehabilitation of Centaur Ins. Co.*, 158 Ill. 2d 166, 173–74, 198 Ill. Dec. 404, 632 N.E.2d 1015, 1018 (1994) (Illinois law); *JPMorgan Chase Bank, N.A. v. Malarkey*, 65 A.D.3d 718, 721, 884 N.Y.S.2d 787, 791 (3d Dep't 2009) (New York law).

[28]See *Cohen v. Schroeder*, 2016 WL 1070851, *5 (S.D. N.Y. 2016) ("The appellees cannot take advantage of the corporate entity when convenient, and disregard it when inconvenient.") (citing *Jones v. Teilborg*, 151 Ariz. 240, 247, 727 P.2d 18 (Ct. App. Div. 2 1986)).

[29]See *Coxall v. Clover Commercial Corp.*, 4 Misc. 3d 654, 667, 781 N.Y.S.2d 567, 54 U.C.C. Rep. Serv. 2d 5 (N.Y. City Civ. Ct. 2004) ("Revised Article 9, like its predecessor, 'provides a minimum, statutory, damage recovery for a debtor . . . in a consumer goods transaction' that 'is designed to ensure that every noncompliance . . . in a consumer-goods transaction results in liability.' '') (citations omitted); *Atlas MF Mezzanine Borrower, LLC v. Macquarie Texas Loan Holder LLC*, 174 A.D.3d 150, 159, 105 N.Y.S.3d 59, 99 U.C.C. Rep. Serv. 2d 182 (1st Dep't 2019) ('' 'Overall, the aim of the Code is to encourage parties to resolve their disputes amicably' . . . The Code provides the avenues parties may take to redeem a debt and to protect their rights during and after the disposition process, as well as remedies in the event a secured party does not comply with the Code.") (citations omitted); *Onglingswan v. Chase Home Finance, LLC*, 2010 WL 784279 (N.Y. Sup 2010), modified on reargument, 2011 WL 5295041 (N.Y. Sup 2011), order rev'd, 104 A.D.3d 543, 961 N.Y.S.2d 149 (1st Dep't 2013).


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