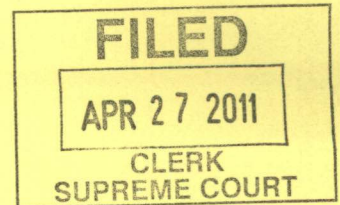


COMMONWEALTH OF KENTUCKY
SUPREME COURT OF KENTUCKY
NO. 2009-SC-000819-D



INTER-TEL TECHNOLOGIES, INC.,
AND INTER-TEL, INC.

APPELLANTS

v.

LINN STATION PROPERTIES, LLC AND
INTEGRATED TELECOM SERVICES CORP.

APPELLEES

**ON REVIEW FROM THE KENTUCKY COURT OF APPEALS
CASE NO: 2008-CA-002266-MR and the
JEFFERSON CIRCUIT COURT, HON. IRV. MAZE, JUDGE
CASE NO: 03-CI-05485**

**REPLY BRIEF FOR THE APPELLANTS,
INTER-TEL TECHNOLOGIES, INC., AND INTER-TEL, INC.**

A handwritten signature in cursive script, reading "William H. Mooney". The signature is written in dark ink and is positioned above the typed name and address.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of foregoing was on this 26th day of April 2011, sent via Federal Express to the Clerk of the Supreme Court, Room 235, State Capitol, 700 Capitol Avenue, Frankfort, Kentucky, 40601 with a true and correct copy of the foregoing sent via U.S. mail to: Ridley M. Sandidge, Jr., Esq., Reed, Weitkamp, Schell, Vice, PLLC, 2400 PNC Plaza, 500 West Jefferson Street, Louisville, Kentucky 40202-2812; Clerk, Court of Appeals, 360 Democrat Drive, Frankfort, Kentucky 40601; Hon. Irv Maze, Jefferson Circuit Court, Division Ten, 700 W. Jefferson Street, suite 901, Louisville, Kentucky 40202.

A handwritten signature in cursive script, reading "William H. Mooney". The signature is written in dark ink and is positioned above the typed name.

William H. Mooney

ARGUMENT

A. Piercing the Corporate Veil Requires a Showing of Something More than an uncollectable debt.

What Linn Station Properties, LLC (“**Linn Station**”) asks this Court to do is uphold the Trial Court’s decision almost exclusively on the basis of “equity” i.e., because it cannot collect on the default judgment obtained against Integrated Telecom Services Corp., (“**ITS**”), and therefore, it should be allowed to pierce the corporate veil of ITS’s parent, Inter-Tel Technologies, Inc. (“**Technologies**”) and the parent’s parent, Inter-Tel, Inc. (“**Inter-Tel**”). Linn Station argues that fraud is not required to pierce the corporate veils of these two separate corporations, instead the corporate entity should be totally disregarded based upon a mere claim of unjust loss or in order to not promote an unjust result. (Linn Station’s Brief, pp. 26-27). What Linn Station ignores is that Kentucky law holds that “one who seeks equity must do equity.” Carrs Fork Corp. v. Kodak Min. Co., 809 S.W.2d 699, 702 (Ky. 1991); Akers v. Cushman Const. Co., Inc., 487 S.W.2d 60, 63 (Ky. 1972); Bartman v. Shobe, 353 S.W.2d 550, 555 (Ky. 1962).

For three years, Linn Station accepted lease payments from Inter-Tel on behalf of ITS and never took issue with ITS’ corporate entity structure. Despite being advised that neither Inter-Tel nor Technologies were responsible for ITS’s lease, and that ITS was defunct, Linn Station brought suit only against ITS. It was not until Linn Station obtained a default judgment against ITS that it decided to sue Inter-Tel and Technologies.

Whether the Court considers fraud or an unjust loss, there has to be something more established before the corporate veil can be pierced. The focus has to be on what Linn Station knew and what it did with that knowledge and not upon after-acquired information such as the tax treatment of ITS. Linn Station cannot claim that an inequitable situation occurred when it

knew the situation as it related to ITS, Inter-Tel, Technologies and the lease but failed to exercise its contractual rights during the term of the lease and then failed to join all the appropriate parties during the litigation process. Considering Linn Station has not met its burden under Kentucky's summary judgment standard or Kentucky's piercing the corporate veil standard, this Court should reverse the decision.

B. The Law of the Case Doctrine has No Application to this Case.

Linn Station's Brief has now presented a "damned if you do, damned if you don't" argument based upon the law of the case doctrine. As pointed out by Inter-Tel and Technologies in their initial brief, the Court of Appeals failed to address their argument that the default judgment was void against them because they were not parties to the default judgment action because the Court of Appeals believed that they had failed to raise that argument in the appeal styled Inter-Tel Technologies, Inc. and Inter-Tel, Inc. v. Linn Station Properties, LLC and Integrated Telecom Services Corp., File No. 2007-CA-001185. Linn Station now argues to this Court that based upon the assertion that Inter-Tel and Technologies had raised that issue in the prior appeal, the law of the case doctrine precludes them from raising the argument here. Under Linn Station's logic, Inter-Tel and Technologies are either damned because they failed to raise the issue in the prior appeal or damned because they did.

The fallacy to this argument is that the law of the case doctrine applies only to a final decision of the Court of Appeals that is conclusive of questions resolved in that prior opinion. Brooks v. Lexington-Fayette Urban County Housing Authority, 244 S.W. 3d 747 (Ky. App. 2008). The first appeal here was the result of a statutorily created right to immediately appeal a trial court's decision to deny a motion to compel arbitration pursuant to KRS 417.220. The Court of Appeals acknowledged that its' Opinion was not a final decision on the merits and

stated “[i]n reaching the decision herein, we express no opinion as to the validity of Linn Station’s claims against Technologies and Inter-Tel. Rather, **we simply conclude that this litigation must be persuaded in the trial court rather than arbitration proceedings.**” If Linn Station truly believed the law of the case doctrine applied to Inter-Tel and Technologies in this regard than why is it that Linn Station did not make this argument to the Trial Court in conjunction with the summary judgment motion or the Court of Appeals from which this appeal arises?

C. There is No Basis to Pierce the Corporate Veil of Both Inter-Tel and Technologies

Linn Station cites a series of cases in support of its argument that the corporate veils of Inter-Tel and Technologies can be simultaneously pierced. However, a review of each of those cases establishes that those cases are not applicable to this case. For example, United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO v. Great American Industries, Inc., 479 F. Supp. 216 (S. D. N. Y. 1979), involved a union’s claim for violation of a collective bargaining agreement. In that case, while the Court did pierce the corporate veil of the “grandparent” corporation, it was based upon the evidence that the “grandparent” corporation actually negotiated the terms of the collective bargaining agreement which was allegedly breached. The record clearly established that the parent corporation actually played no role in creating the basis for the litigation and that it was only the “grandparent” who exercised the improper control over the subsidiary. In Gorrill v. Icelandair/Flugleidir, 761 F.2d 847 (2nd Cir. 1985), employees of an airline company filed suit against Icelandair, the entity that owed all of the stock of the employer company through a holding company. Once again, the decision in that case to impose liability against Icelandair was based upon the fact that it was the corporation which terminated the employees, giving rise to the wrongful termination suit. The decision makes no attempt to

analyze piercing the corporate veil in a grandparent/parent situation. In In re Cambridge Biotech Corporation, 186 F.3d 1356 (Fed. Cir. 1999), the alleged “grandparent” corporation had direct contractual obligations to the plaintiff. While discussed, the case did not turn on piercing the corporate veil analysis. Finally, Uebelacker v. Paula Allen Holdings, Inc., 464 F. Supp.2d 791 (W.D. Wis. 2006) did not involve any analysis concerning piercing the corporate veil nor impose liability. Rather, this case merely denied the parent/grandparent’s motion to dismiss on the grounds that the court felt that the complaint had sufficiently stated a potential cause of action against both the parent and grandparent.

Thus, Linn Station has failed to direct this Court to any case law which would support its argument that the corporate veils of Inter-Tel and Technologies should be simultaneously pierced to allow it the ability to collect a judgment that it chose to get only against ITS. Linn Station’s appeal to this Court to uphold the dual piercing of the veils of the parent and the grandparent would create new law within the Commonwealth, establishing a very low standard for piercing corporate veils in the future.

CONCLUSION

No injustice, no wrong and no statutory violation has occurred in this case warranting the piercing of the corporate veil and therefore the Court of Appeals’ decision should be reversed.



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