

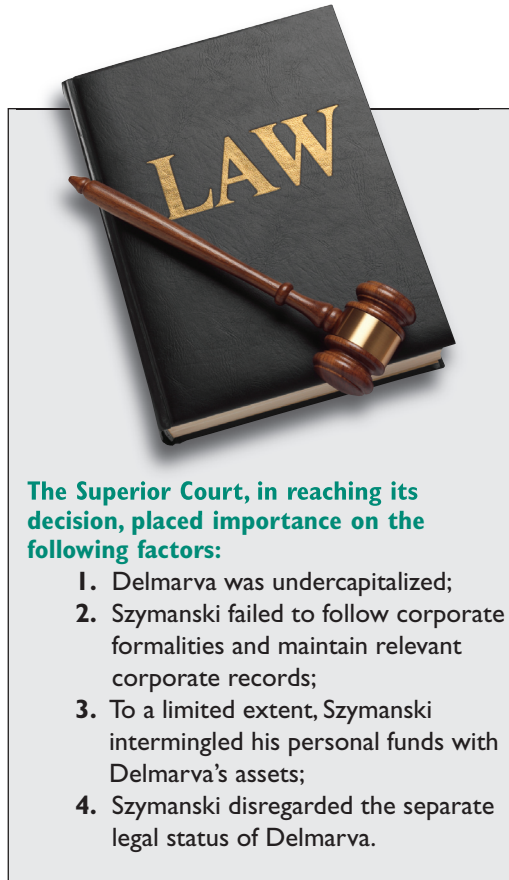
## Corporate Debts Are Not My Personal Responsibility, Right?

Are you one of the many people who think that just because your business is incorporated a creditor can't reach your personal assets? Think again. The recent case of *Fletcher-Harlee Corporation v. Szymanski*, a decision of the Superior Court of Pennsylvania, fires a warning shot across the bow of those individuals who conduct corporate businesses like a sole proprietorship and think their personal assets are beyond reach of corporate creditors.

Fletcher-Harlee filed an arbitration demand against Delmarva Concrete, Inc. David Szymanski was its sole shareholder. Delmarva chose not to defend the arbitration and an award was entered against it. Later, Delmarva filed for bankruptcy and Szymanski remained in business, operating a corporation performing concrete construction, in which he was the sole shareholder.

Seeking to "pierce the corporate veil" and reach the personal assets of Szymanski and others, Fletcher-Harlee filed suit to recover the arbitration award which was in excess of \$300,000.

After a non-jury trial, the Court ruled in favor of Szymanski. The trial court verdict was appealed. On appeal, Fletcher-Harlee argued that the trial court reached the wrong decision because it found that Szymanski had not committed common law fraud. Proof of common law fraud was not required in order to reach Szymanski individually, Fletcher-Harlee argued. The Superior Court agreed with Fletcher-Harlee, reversing the trial court's decision.



**The Superior Court, in reaching its decision, placed importance on the following factors:**

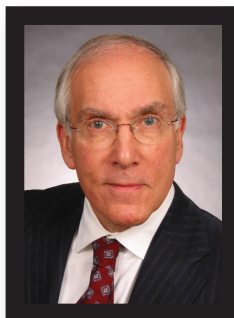
1. Delmarva was undercapitalized;
2. Szymanski failed to follow corporate formalities and maintain relevant corporate records;
3. To a limited extent, Szymanski intermingled his personal funds with Delmarva's assets;
4. Szymanski disregarded the separate legal status of Delmarva.

The Superior Court agreed with the trial court that Fletcher-Harlee failed to prove that Szymanski perpetrated a fraud upon Fletcher-Harlee but said proof of fraud was not required to pierce the corporate veil.

**To avoid such an unfavorable result, corporations should, at the very least, do the following:**

1. Update the corporate minutes at least yearly;
2. Prepare corporate resolutions for transactions that are not typically entered into with the corporation, such as rental or purchase of real estate;
3. Evidence all loans to the corporation with the appropriate documentation;
4. Do not use the corporation as a bank, draining it of its working capital – maintain proper capitalization;
5. Have separate leases for different corporations using the same space;
6. Use separate computer systems for different corporations – to the extent this is possible;
7. Use separate leases for the cost sharing agreement;
8. Sign all contracts in a corporate capacity, clearly stating your title or corporate position.

*These are a few of the pointers which, if followed, should allow you to sleep easy at night. Be aware, however, that the Fletcher-Harlee decision will be relied upon by attorneys seeking to recover monies owed by "dry" or bankrupt corporations.*



**By Robert A. Korn, Esquire**

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