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THE “LONG ARM” OF THE LAW: OBTAINING PERSONAL JURISDICTION OVER A PARENT COMPANY IN COLORADO

Under a new personal jurisdiction test in Colorado for out-of-state parent companies, plaintiffs now face a heavy factual burden and in some situations might be priced out of bringing a suit. In *Griffith v. SSC Pueblo Belmont Operation Co.*,¹ and *Meeks v. SSC Colorado Springs Colonial Columns Operating Co.*,² the Colorado Supreme Court promulgated a test to apply when determining whether a court has personal jurisdiction over a parent company that does not have minimum contacts within the state.³ The Supreme Court held that a court may obtain personal jurisdiction through imputing a subsidiary company’s jurisdiction onto the parent company.⁴ To impute personal jurisdiction, a court must find sufficient justification to pierce the subsidiary company’s corporate veil.⁵ Otherwise, a court must evaluate the personal jurisdiction of each entity separately.⁶ The Supreme Court imposes a heavy factual burden on the plaintiff, which incentivizes parent companies to form many layers of limited liability entities not distinct from itself. To prove this conclusion, this article will first examine the Supreme Court’s holding in *Griffith* and *Meeks* and then argue that the holdings in both cases force a plaintiff to satisfy a heavy factual burden and incur additional costs, which in turn incentivizes parent companies to form multiple entities without making each distinct from the parent company.

I. BACKGROUND

Under Colorado Law, a court may have personal jurisdiction over an individual in any cause of action arising from a business transaction, tort, real property dispute,⁷ or the maintenance of matrimonial domicile.⁸ “In enacting [the] long-arm statute, the Colorado legislature intended to extend the jurisdiction of [the] courts to the fullest extent permitted by the due process clause of the United States Constitution.”⁹ This “long-arm statute” enables Colorado Courts to obtain jurisdiction over entities

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¹. 2016 CO 60M, as modified on denial of reh'g (Oct. 17, 2016).
². 2016 CO 61 (Sept. 26, 2016).
⁴. Id.
⁵. Id.
⁶. Id.
⁷. The real property must be situated in the State of Colorado. COLO. REV. STAT. § 13-1-124 (stating that a court may have personal jurisdiction on “any cause of action arising from[,] [t]he ownership, use or possession of any real property situated in [Colorado].”).
⁸. Id.
as well as individuals so long as the nonresident defendant has minimum contacts. Some examples of such minimum contacts are “having agency relationships within the forum state or placing products into the stream of commerce.” Both Griffith and Meeks address the problem of obtaining personal jurisdiction over a parent company where the parent company does not have minimum contacts.

A. Griffith

In Griffith, the personal representative of the Estate of Antonio Jimenez, Jr. filed a complaint against eleven parties comprised of nine entities and two individuals. The suit alleges that one of the entities, SSC Pueblo Belmont Operating Company, was negligent and that the entity’s negligence caused the wrongful death of Mr. Jimenez. The other entities included in the suit are layers in “a complex organizational structure” where one entity would be a wholly owned subsidiary of another entity which is also a wholly owned subsidiary of a different entity. The problem in Griffith is that not all the entities are residents of Colorado or have minimum contacts to establish personal jurisdiction. To obtain personal jurisdiction, the trial court applied a distinct entity test. After conducting an evidentiary hearing, the trial court determined that all nine entities were not distinct from each other and therefore the subsidiary company’s (SSC Pueblo Belmont Operating Company) jurisdiction could be imputed onto the remaining entities.

The Colorado Supreme Court rejected the trial court’s distinct entity test. Instead, it held that a trial court must find sufficient justification to pierce the corporate veil to impute personal jurisdiction. If the corporate veil cannot be pierced, then a trial court must determine personal jurisdiction separately for each entity. The Court examined three ways in which to pierce the corporate veil: “when (1) the entity is ‘merely the alter ego’ of the member, (2) the LLC form is used to perpetuate a wrong, and (3) disregarding the legal entity would achieve an equitable result.” To establish that an entity is an alter ego, the Supreme Court

12. Griffith, ¶ 2; Meeks, ¶ 2.
14. Id.
15. Id. at ¶ 3.
16. Id. at ¶ 2.
17. Id. at ¶ 6.
18. Id.
19. Id. at ¶ 15–16.
20. Id. at ¶ 10.
21. Id. at ¶ 10.
22. Id. at ¶ 12 (citing In re Phillips, 139 P.3d 639, 644 (Colo. 2006)).
introduced a list of factors that a trial court should consider before coming to its determination.23 The factors to consider are:

(1) The parent owns all the stock; (2) both have common directors and officers; (3) the parent finances the subsidiary; (4) the parent causes the subsidiary’s incorporation; (5) the subsidiary has grossly inadequate capital; (6) the parent pays salaries or expenses of the subsidiary; (7) the subsidiary has no business except with its parent or subsidiary corporation or no assets except those transferred by its parent or subsidiary; (8) directors and officers do not act independently in the interests of the subsidiary; (9) formal legal requirements of the subsidiary such as keeping corporate minutes are not observed; (10) distinctions between the parent and subsidiary . . . are disregarded or confused; (11) subsidiaries do not have full board[s] of directors.24

The Supreme Court concluded its opinion by remanding the case back to the trial court to determine whether personal jurisdiction over the non-resident entities is warranted under the new test.25

B. Meeks

Meeks also concerns whether a trial court can impute personal jurisdiction over a non-resident parent company.26 Like Griffith, there was a “complex organizational structure,” and the trial court did not have jurisdiction over all of the entities.27 The trial court in Meeks also applied a distinct entity test when determining personal jurisdiction.28 Like Griffith, the trial court found that the entities were not distinct and imputed personal jurisdiction onto the other companies.29 The trial court in Meeks did not conduct an evidentiary hearing before coming to its conclusion.30 The Supreme Court disagreed with the trial court’s choice not to conduct an evidentiary hearing and by applying the distinct entity test.31

II. ARGUMENT

The Colorado Supreme Court’s holding in Griffith and Meeks failed to recognize that the distinct entity test has the same goal as the alter ego

23. Id. at ¶ 13 (quoting Luckett v. Bethlehem Steel Corp., 618 F.2d 1373, 1378 n.4 (10th Cir. 1980) (citing Fish v. East, 114 F.2d 177, 191 (10th Cir. 1940) (applying Colorado law))).
24. Id. (quoting Luckett, 618 F.2d at 1378 n.4 (citing Fish, 114 F.2d at 191 (applying Colorado law))).
25. Id. at ¶ 25.
27. See id. at ¶ 2 ("The facts of this case are similar to those in Griffith."); see also Griffith, ¶ 2–3.
29. Id.; Griffith, ¶ 6.
30. Meeks, ¶ 3.
31. Id. at ¶ 8, 13.
test and failed to recognize the additional costs and incentives associated with requiring a more fact-intensive alter ego test.\(^3^2\)

A. Distinct Entity v. Alter Ego

The Supreme Court believes that the distinct entity test is different from an alter ego test.\(^3^3\) However, both tests have the same goal of imputing jurisdiction if the entities are not separate from each other.\(^3^4\) The alter ego analysis and the distinct entity test both are applied to conclude that companies are one in the same.\(^3^5\) The difference between the two is that the alter ego test requires a court to examine multiple factors before imputing personal jurisdiction.\(^3^6\) The trial court in Griffith reasoned “that the entities all ‘operated the Colorado nursing home as one business in which they collectively controlled the operations, planning, management, and budget of [Belmont Lodge] in Colorado.’”\(^3^7\) While not explicitly relying on the factors included in the alter ego test, it is reasonable to assume that the trial court came to its decision by taking into account some, if not all, of the factors that are in the alter ego test.\(^3^8\) While the Supreme Court disagreed with the trial court’s use of the distinct entity test, the trial court followed the same underlying reasoning as the alter ego test.\(^3^9\)

In Meeks, the Supreme Court disapproved that the trial court did not conduct an evidentiary hearing before imputing personal jurisdiction on the nonresident entities.\(^4^0\) Both Griffith and Meeks show that the Supreme Court wants trial courts to conduct extensive fact-finding when determining whether to impute personal jurisdiction.\(^4^1\) These rulings indicate that the reasoning behind the distinct entity test is valid, but that the party alleging personal jurisdiction has a burden of providing an extensive factual record which satisfies the list of factors in the alter ego test.

B. Ramifications

While it is likely that a trial court already considers some, if not all, of the factors laid out in Griffith, now a trial court must explicitly refer-
ence each of the eleven factors the Supreme Court provides. This list of factors creates a high factual bar for a trial court to leap over before determining personal jurisdiction. The problem with having such a stringent factual requirement is that the process will take time to establish if a subsidiary is really an alter ego of a parent company because of the combative nature of the discovery process. This time frame drastically increases when a plaintiff wishes to bring in many different entities like the scenario in Griffith and Meeks. This burden means that plaintiffs will incur more costs when trying to bring in other nonresident parent companies.

While one must respect the Supreme Court’s ruling as protecting the purpose of having a limited liability entity, that being to limit the liability of the entity’s members, one must also consider whether a distinction should be made when an LLC has multiple layers of ownership like in Griffith and Meeks. While this rule makes perfect sense when an LLC has only one layer of ownership, it creates too heavy a burden for a plaintiff when an LLC has multiple layers of ownership. This burden on the plaintiffs also creates an incentive for parent companies to create many layers of ownership. Hypothetically, a company can limit its liability and operate its subsidiaries like an “alter ego” without worrying about the repercussions because of the increased costs associated with attempting to pierce the corporate veil using an alter ego theory. Large companies with multiple layers of limited liability entities operating as alter egos will have less risk of being dragged to court because of the time and costs associated with trying to prove an alter ego theory. So while the Supreme Court’s ruling is reasonable when looking at a layer of limited liability that does not extend past one level of ownership, the test is unreasonable when applying the Supreme Court’s test to a subsidiary with a “complex organizational structure.”

III. CONCLUSION

While both the rulings in Griffith and Meeks attempt to balance the interests of both limited liability members and plaintiffs, the Colorado Supreme Court created a test to impute jurisdiction on parent companies that creates a substantial factual burden which in turn incentivizes parent companies to form many subsidiaries and operate them as alter egos.

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