VERNON D. ADAMS : NUMBER: 537,865-B

VERSUS : FIRST JUDICIAL DISTRICT COURT

MONICA FLUTZ, MARK YAWN,

CIRCLE K STORES, INC.,

COMPREHENSIVE GENERAL

CONTRACTORS, INC., AND THE

HANOVER INSURANCE GROUP : CADDO PARISH, LOUISIANA

**REASONS FOR JUDGMENT ON MOTION TO SET DEPOSITION OF**

**MARK YAWN ON ISSUE OF CORPORATE VEIL PIERCING ISSUES AND TO DEFER SETTING OF DEFENDANTS’ MOTION FOR**

**PARTIAL SUMMARY JUDGMENT**

The Court has thoroughly considered the Motion to Set Deposition of Mark Yawn on Issue of Corporate Veil Piercing Issues and to Defer Setting of Defendants’ Motion for Partial Summary Judgment, filed February 13, 2014 by Plaintiff Glenda Adams, an opposition presented post-hearing by Defendants Comprehensive General Contractors, Inc., Mark Yawn, and Massachusetts Bay Insurance Company, a supplemental memorandum filed 3/6 by plaintiff counsel, extensive oral arguments of counsel held March 5, 2014 and applicable law. For reasons that follow, the Court concludes that the motion to depose Mark Yawn is granted, with special conditions, and the motion to defer setting of the defendants’ motion is granted (with the motion for partial summary judgment to be re-set within 90 days).

On March 11, 2013 the plaintiff filed a second amended petition which set forth veil piercing claims regarding Mark Yawn and his corporation, Comprehensive General Contractors, Inc. On April 25, 2013 the Second Circuit Court of Appeal, while denying writs, wrote “Given that the plaintiff has filed a second amended petition asserting facts that, if proven, might permit her to pierce the corporate veil, this issue is likely to be revisited by the trial court”. (Writ no. 48392–CW). On July 17, 2013, this Court, in granting relief sought by defense counsel, wrote, “there will be no further deposition of Mark Yawn except as to the corporate veil piercing issues alleged in the second amended petition and, then, only upon motion by counsel and specific order of the Court”.

This Court has “revisited” the issue in connection with the instant motion as suggested by the appellate court and makes the following observations: (1) Mark Yawn was twice deposed by plaintiff counsel on November 10, 2010 (approximately one hour and fifty minutes) and on June 29, 2012 (approximately three hours and 25 minutes) for a total of about five hours, which included questions about Mr. Yawn’s corporate formalities; (2) Notwithstanding that liability issues are in dispute and formally contested, it is a matter of record that there is a substantial amount of insurance coverage available for the corporation; however, there is arguably a legal question presented as to whether coverage would exist in the event of veil piercing on the basis that the named insured is the corporation, not Mr. Yawn personally; (3) Mr. Adams, although probably a fine, outstanding citizen, is now deceased; the causation between the fall and his death is in dispute, but in any event, his widow’s potential monetary damages have a ceiling which most likely, from a legal standpoint, would not exceed the total amount of coverage; and, (4) given those factors, the Court questions the propriety of yet another deposition of Mr. Yawn where arguably the intent and manner could be said to “unreasonably annoy, embarrass, or oppress the deponent or party” as referenced in La.C.C.P. art 1444. Nevertheless, in light of the appellate ruling of April 25, 2013 and this Court’s ruling of July 17, 2013, the motion will be granted with the following parameters:

(1) the duration of the deposition shall be forty-five (45) minutes, not including preliminary introductory remarks;

(2) the subject matter of the deposition shall exclusively be issues involving corporate veil piercing[[1]](#footnote-1) that were not included in the previous depositions and shall not be issues routinely addressed in a judgment debtor examination;

(3) while defense counsel may lodge objections, such should not be done for any improper purpose, for example to intrude on and consume the forth-five (45) minute deposition time limit;

(4) any material and relevant corporate-related documents that exist, and particularly material and relevant documents previously subpoenaed, shall be presented during the deposition, not before as may have been called for in the subpoena request; and

(5) the deposition must be scheduled within 45 days of this ruling.

Signed this 7th day of March, 2014, in Shreveport, Caddo Parish, Louisiana.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

SCOTT J. CRICHTON

DISTRICT JUDGE

DISTRIBUTION:

John Milkovich, Counsel for Plaintiff Glenda Adams

Alan Seabaugh, Counsel for Defendants Mark Yawn and Comprehensive General Contractors,Inc.

J. Michael Nash, Counsel for Defendants Comprehensive General Contractors, Inc., Mark Yawn, and Massachusetts Bay Insurance Company

Allen Cooper, Counsel for Plaintiffs Vernon Adams and Vicki Pendelton

1. The following possibly relevant topics may be addressed during Mr. Yawn’s deposition: (1) commingling of corporate and shareholder funds; (2) failure to follow statutory formalities required for the transaction of corporate affairs; (3) undercapitalization; (4) failure to provide separate bank accounts and bookkeeping records, and (5) failure to hold regular shareholder or director meetings. [↑](#footnote-ref-1)