State of New York
Court of Appeals

OPINION

No. 100
In the Matter of Franklin Street Realty Corp.,
Appellant,
v.
NYC Environmental Control Board, et al.,
Respondents.
(And Three Other Proceedings.)

Lindsay I. Garroway, for appellants.
Barbara Graves-Poller, for respondents.

WILSON, J.:

Petitioners are four corporations: 23-06 Jackson Avenue Realty Corporation, 41-03 31 Avenue Realty Corporation, Franklin Street Realty Corporation, and J.P. and Associates Properties Corporation. Each owns a relatively small residential or mixed-use building in

Brooklyn or Queens; J.P. and Associates Properties Corporation owns two. John J. Ciafone and/or his spouse have ownership interests in each of petitioner corporations. Each of the five buildings had signage affixed to it advertising Mr. Ciafone's law practice, organized as the professional corporation John J. Ciafone, P.C. The New York City Department of Buildings cited the corporations for violations of the Administrative Code of the City of New York §§ 28-105.1, 28-415.1, and 28-502.6, as well as New York City Zoning Resolution §§ 22-32 and 32-63, which require, among other things, those who hang signs on buildings to be licensed to do so. The fines attendant to those violations were enhanced on the ground that the corporations were "outdoor advertising companies" ("OACs") engaged in the "outdoor advertising business" under Administrative Code § 28-502.1.

Under Administrative Code § 28-502.1, an OAC is:

> "A person, corporation, partnership or other business entity that as a part of the regular conduct of its business engages in or, by way of advertising, promotions, or other methods, holds itself out as engaging in the outdoor advertising business."

The Code defines "outdoor advertising business" as:

> "The business of selling, leasing, marketing, managing, or otherwise either directly or indirectly making space on signs situated on buildings and premises within the city of New York <u>available to others</u> for advertising purposes, whether such advertising directs attention to a business, profession, commodity, service or entertainment conducted, sold, or offered on the same or a different zoning lot, whether such advertising direct attention to a business, profession, commodity, service or entertainment conducted, sold, or offered on the same or a different zoning lot and whether such sign is classified as an advertising sign pursuant to section 12-10 of the zoning resolution" (emphasis added).

The notices of violation were reviewed in hearings held by the Office of Administrative Trials and Hearing's Environmental Control Board ("ECB") division. Petitioner corporations appealed the fines on the ground that they were not OACs under the Code. They argued that because Mr. Ciafone owned the corporations, the advertisements of his law practice did not constitute the provision of advertising to "others." In several decisions, the hearing officers dismissed most of the violations at each of the properties, concluding that petitioner corporations were not OACs because they did not make space "available to others" but instead, Mr. Ciafone, albeit under a corporate name, advertised only himself.

On administrative appeal, the Environmental Control Board disagreed with the hearing officers' decisions, concluding that petitioner corporations were OACs because they made advertising space available to a different legal entity, John J. Ciafone, P.C. Petitioner corporations filed CPLR article 78 proceedings seeking to annul the ECB's determinations, which Supreme Court transferred to the Appellate Division. The Appellate Division, with two Justices dissenting, confirmed the ECB's determinations, holding that "petitioners, which are corporations, made space on signs available to Ciafone's law practice (a professional corporation), a separate and distinct entity" (see Franklin St. Realty Corp. v NYC Envtl. Control Bd., 164 AD3d 19, 24-25 [1st Dept 2019]). The Appellate Division reasoned that "[i]t is fundamental that individuals, corporations, and partnerships are each recognized as separate legal entities, and in this statutory context constitute

'others' regardless of the common principal ownership or connection between entities" (id. at 25). Petitioner corporations appealed to this Court as of right.

The question presented here — the meaning of the term "others" in the Code — "is one of pure statutory reading and analysis, dependent only on accurate apprehension of legislative intent, [and therefore] there is little basis to rely on any special competence or expertise of the administrative agency" (International Union of Painters & Allied Trades, Dist. Council No. 4 v New York State Dept. of Labor, 32 NY3d 198, 209 [2018] [quoting Seittelman v Sabol, 91 NY2d 618, 625 (1998)][internal quotation marks omitted]). We construe words of "ordinary import with their usual and commonly understood meaning" (Rosner v Metropolitan Prop. and Liability Ins. Co., 96 NY2d 475, 479 [2001]), and the most natural reading of "others" is distinct legal entities. Petitioner corporations, although admittedly owned either by Mr. Ciafone or by both Mr. Ciafone and his spouse, are indisputably distinct legal entities from John J. Ciafone and John J. Ciafone, P.C. Thus, by advertising a distinct legal entity on their buildings, petitioner corporations made space available to others and are OACs under the Code.

Although petitioner corporations contend that we should look past corporate ownership forms in determining whether petitioner corporations are OACs, we reject that argument. The essential purpose behind corporations and other fictive entities is to give them a separate legal existence from the natural persons who own them and from other legal entities (see e.g. Morris v New York State Dept of Taxation and Fin., 82 NY2d 135, 140 [1993] ["a corporation exists independently of its owners, as a separate legal entity"];

Port Chester Elec. Constr. Corp. v Atlas, 40 NY2d 652, 656 [1976] ["(c)orporations, of course, are legal entities distinct from their managers . . . and have an independent legal existence"]). The "separate personalities [of corporations and their managers] cannot be disregarded" (Port Chester Elec. Constr. Corp., 40 NY2d at 656), as "[d]isregard of the dual personality of corporation and stockholder would . . . defeat one of the principal purposes for which the law has created the corporation" – the "purpose of escaping personal liability" (Rapid Tr. Subway Constr. Co. v New York, 259 NY 472, 488 [1932]). Mr. Ciafone could have held the buildings in his own name; it was his choice not to do so. A principal advantage of holding assets through a corporation is that the shareholder is generally insulated from personal liability (id.; see e.g. Bartle v Home Owners Coop., Inc., 309 NY 103, 106 [1955]["(t)he law permits the incorporation of a business for the very purpose of escaping personal liability . . ."]). Mr. Ciafone and the other shareholders of these corporations obtained that benefit, and may also have obtained tax or other benefits through their choice to hold the buildings in a corporate form. There is no statutory or equitable basis to disregard the corporate form chosen by Mr. Ciafone or other shareholders in these corporations.

Contrary to the position of the Appellate Division dissent, preserving the distinction between the corporate entities and Mr. Ciafone does not "penalize him for forming corporate entities to own the buildings for tax and liability purposes" (see Franklin St. Realty Corp., 164 AD3d at 34 [Andrias, J., dissenting]). Myriad statutes and regulations apply to corporations, but not natural persons; those are not "penalties" for creating a

corporate legal entity, but consequences of choosing that form of ownership. The New York City Council could rationally conclude that a corporation engaged in the provision of advertising to others, even others who have an ownership interest in the corporation, should be subjected to greater financial disincentives for violating signage laws than natural persons who are advertising themselves.[1]

In addition, the language used in the Code to define "outdoor advertising business" demonstrates the City Council's intent to expand the breadth of its regulations and include companies like petitioner corporations in the definition of an OAC. The Code reaches companies that advertise in a number of ways – by "selling, leasing, marketing, managing, or otherwise either directly or indirectly making space on signs situated on buildings and premises within the city of New York available to others."[2] The purpose of the outdoor advertising laws was to establish a comprehensive scheme that would "substantially strengthen" enforcement of sign regulations (Memorandum in Support of Local Law 2001/14 at 2). Allowing corporate building owners – even those that advertise a principal

[1] This is especially true where the legislative history shows that a primary concern of the legislature in passing and amending the Code was the key role that companies, "rather than individual property owners," play in creating the visual blight these signs represent (Memorandum in Support of Local Law 2005/31 at 1).

[2] Petitioner corporations now argue that they should not be considered OACs, subject to enhanced fines of $10,000 per violation on the basis of that classification, because their principal business is the rental of the buildings to residential and commercial tenants. In support of that argument, they contend that outdoor advertising is not "a part of the regular conduct of [their] business" (Administrative Code § 28-502.1). However, they did not raise that argument in the administrative hearings or on appeal to the ECB, thus depriving DOB of the opportunity to address that issue either factually or legally. It is therefore unpreserved.

shareholder's separate business – to fall under the definition of an OAC comports with the legislative intent to expand the regulations of outdoor advertising and to minimize "the visual blight these signs represent" (id. at 1).

Because Mr. Ciafone, his professional corporation and petitioner corporations are separate legal entities, petitioner corporations are OACs under the plain language of Administrative Code § 28-502.1. We have considered the corporations' remaining claims, which are either not preserved or without merit. The order of the Appellate Division should be affirmed, with costs.

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Order affirmed, with costs. Opinion by Judge Wilson. Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia and Feinman concur.

Decided December 17, 2019