

SUPREME COURT OF NEW HAMPSHIRE

LaMontagne Builders, Inc. v. Bowman Brook Purchase Group

150 N.H. 270 (2003) · Decided November 24, 2003

SUMMARY

The New Hampshire Supreme Court affirmed an order holding R. Scott Brooks personally liable for \$465,292.85 owed to LaMontagne Builders, Inc. under a construction agreement and awarding attorney’s fees against the defendants. The court upheld piercing the corporate veil based on Brooks’s fraudulent use of corporate entities and affirmed attorney’s fees because the defendants acted in bad faith and defended without a reasonable basis.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Duggan, J.; Brock, C.J.; Nadeau, J.; Dalianis, J.
JURISDICTION	New Hampshire
DECIDED	November 24, 2003
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendants appealed from a superior court order holding R. Scott Brooks personally liable for \$465,292.85 owed under a construction agreement and awarding attorney's fees against Brooks, the partnership, and Bowman Green Development Corporation.
STANDARD OF REVIEW	The court reviewed corporate-veil piercing as an equitable remedy under a clearly unsupported by the evidence standard and reviewed attorney's-fee awards under the unsustainable exercise of discretion standard.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion; precedential
PARTIES	Bowman Brook Purchase Group, R. Scott Brooks v. LaMontagne Builders, Inc.

TOPICS

- construction law
- breach of contract
- corporate veil piercing
- damages
- commercial litigation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the defendants preserved their claim that the superior court improperly awarded damages and attorney's fees without notice.
2. Whether the evidence supported piercing the corporate veil and holding R. Scott Brooks personally liable.
3. Whether the superior court properly awarded attorney's fees against Brooks and Bowman Brook Purchase Group.

HOLDINGS

1. The defendants' lack-of-notice challenge was not preserved for appellate review because they did not object when LBI requested findings and rulings or move for reconsideration after the superior court entered its order.
2. The superior court properly pierced the corporate veil and assessed personal liability against Brooks because the evidence supported its finding that he used the corporate entity to promote injustice or fraud.
3. The superior court properly awarded attorney's fees against Brooks and Bowman Brook Purchase Group because Brooks acted in bad faith and the partnership defended the payment claim without a reasonable basis in fact or law.

KEY QUOTATIONS

"The doctrine of piercing the corporate veil is an equitable remedy and, therefore, is particularly within the province of the trial court." (150 N.H. at 275)

"An award of attorney's fees ... must be grounded upon statutory authorization, an agreement between the parties, or an established exception to the rule that each party is responsible for paying his or her own counsel fees." (150 N.H. at 276)

FACTUAL BACKGROUND

LaMontagne Builders, Inc. entered into a road and utility construction agreement with Bowman Brook Purchase Group and completed substantially all of the required work. R. Scott Brooks promised that LBI would be paid from the proceeds of a development loan, but he and related entities failed to disclose LBI's claim to the bank and directed the loan proceeds to Brooks, his father, or family-controlled entities. LBI relied on the promise by not pursuing a mechanic's lien before the loan closing, yet Brooks later refused to pay, resulting in an arbitration award of \$465,292.85.

PROCEDURAL HISTORY

LaMontagne Builders completed road and infrastructure work for Bowman Brook Purchase Group and later obtained an arbitration award of \$465,292.85. During related superior court litigation concerning an allegedly fraudulent conveyance and foreclosure, the court denied the requested fraudulent-conveyance and foreclosure

relief but entered judgment against Brooks personally and awarded attorney's fees against the defendants. The defendants appealed, challenging preservation, corporate-veil piercing, damages, and attorney's fees; the Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. McAdams, 134 N.H. 445, 447 (1991)
- N.H. Dep't of Corrections v. Butland, 147 N.H. 676, 679 (2002)
- Gammans v. FHP Constructors, 146 N.H. 702, 704 (2001)
- Terren v. Butler, 134 N.H. 635, 639-640 (1991)
- Peter R. Previte, Inc. v. McAllister Florist, Inc., 113 N.H. 579, 582 (1973)
- Glick v. Naess, 143 N.H. 172, 175 (1998)
- State v. Lambert, 147 N.H. 295, 296 (2001)
- Clipper Affiliates v. Checovich, 138 N.H. 271, 278 (1994)
- Cricklewood on the Bellamy Condo. Assoc. v. Cricklewood on the Bellamy Trust, 147 N.H. 733, 739 (2002)

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