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Court Declines to Pierce Corporate Veil in Deutsche Bank's \$243M Dispute



Connecticut's highest court also said that "Deutsche Bank's losses were largely the result of its own negligence and incompetence."



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News



Emily Cousins

Litigation Reporter



Deutsche Bank AG attempted to hold Sebastian Holdings Inc.'s sole shareholder and director personally liable for a \$243 million foreign judgment, but the state Supreme Court affirmed the trial court's judgment in favor of the defendants.

Attorneys said the litigation presented novel issues of choice of law and foreign law.

"We are grateful that after nearly a decade of litigation, the Connecticut Supreme Court has unanimously affirmed the trial court's conclusion that Alexander Vik is not liable to Deutsche Bank for [Sebastian Holdings] trading losses," counsel for the defendant, Charles W. Pieterse of Whitman Breed Abbott & Morgan, said.

Alexander Vik, a citizen of Norway and Monaco, ran his companies Sebastian Holdings and C.M. Beatrice Inc. from an office extension attached to his home in Greenwich. The companies are both organized under the law of the British territory Turks and Caicos Islands.

In 2006, Deutsche Bank became the prime broker for Sebastian Holdings, and pledged \$35 million in assets held in an account at Deutsche Bank as collateral for trading, the [opinion](#) said.

Vik testified that at the beginning of 2008, Sebastian Holdings was profitable and successful. When the financial world collapsed in 2008, the trouble began.

However, when Vik met with bank officials on Oct. 7, 2008, Deutsche Bank gave Vik a report that totaled approximately \$974 million, with a cash balance of approximately \$958 million, the opinion said. This report did not include his agent's trades.

Sebastian Holdings also held assets of approximately \$635 million in accounts at different banks, leading Vik to believe Sebastian Holdings' assets were around \$1.6 billion, the opinion said. Vik decided to repay his father, put cash into Beatrice to decrease debt and implement estate planning, and paid himself capital distributions for multiple projects, the opinion said.

Vik's agent then informed him that "his derivative range trades exhibited 'unlimited downside,' and ... exiting them would lock in ... 'massive losses' to the tune of 'several hundred million dollars,'" the opinion said.

"Vik decided to close out ... [his agent's] trades as best they could," the opinion said. "This was an important decision because terminating certain deals prior to their end date can trigger substantial premium payments."

Between Oct. 13 and 17, Deutsche Bank issued margin calls totaling approximately \$511 million, which Sebastian Holdings paid in full, the opinion said. Based on the Oct. 7 meeting, Vik believed Sebastian Holdings had several hundred million dollars left in its Deutsche Bank accounts, the opinion said.

However, because the trades were not accounted for in the Oct. 7 report, the balances had been overstated by around \$320 million, and when it was revealed that there was a deficit in the accounts, Deutsche Bank sent a sixth margin call of approximately \$309 million, and Sebastian Holdings did not satisfy it, the opinion said.

Seeking to Hold Shareholder Liable

Deutsche Bank filed an action against Vik in the Queen's Bench Division of the High Court of Justice of England and Wales to collect the unpaid margin calls, and interests and costs, the opinion said.

Sebastian Holdings filed a counterclaim for more than \$8 billion in damages.

The English court rejected Sebastian Holdings counterclaims, and rendered judgment in favor of Deutsche Bank and against Sebastian Holdings for \$243 million, including interest, the opinion said.

After Sebastian Holdings failed to pay the judgment, Deutsche Bank filed its action, and claimed Vik caused Sebastian Holdings to breach its contract with the bank, and fraudulently moved funds to third parties to shield his assets.

Deutsche Bank sought a declaratory judgment to pierce the corporate veil and hold Vik personally liable for the English judgment.

The trial court ruled in favor of Vik, and said "in order to pierce a veil, it is necessary that the plaintiff show both control of the company by wrongdoers, and an impropriety that constitutes a misuse of the company by them as a device or façade to conceal their wrongdoing."

Because the trial court did not find that it was Vik's intent to "leave the corporation unable to pay its debts," Deutsche Bank could not pierce the corporate veil, the opinion said.

"On appeal, Deutsche Bank claims that the trial court erred in applying [Turks and Caicos Islands] law to its veil piercing claim. It argues that, under Connecticut's choice of law rules, the trial court should have applied New York or Connecticut law because they are the jurisdictions with the most significant relationship to the parties' dispute," the opinion said.

Novel Issues

The Supreme Court disagreed with Deutsche Bank's claims.

“We conclude that the trial court’s factual findings foreclose Deutsche Bank’s claim under New York, Connecticut, and [Turks and Caicos Islands] law, and, therefore, any error in the trial court’s choice of law analysis or application of [Turks and Caicos Islands] law was harmless,” the opinion said.

Connecticut’s highest court also said that “Deutsche Bank’s losses were largely the result of its own negligence and incompetence.”

“This was a hard-fought, decadelong litigation hinged on novel issues of choice-of-law and foreign law and a complex factual background dating to the 2008 financial crisis, with related proceedings pending in courts around the world,” Pieterse said. “As you’d expect with a case of this magnitude, nearly every issue was sharply litigated, and we were up against talented adversaries from top firms. This win reflects the perseverance and endurance of our whole team from Connecticut, New York and England.”

Also listed on the brief as the defendant’s counsel was Wyatt R. Jansen and Thomas P. O’Connor of Whitman Breed and Richard M. Zaroff and Ira S. Zaroff of Zaroff & Zaroff.

Counsel for the plaintiffs, David G. Januszewski, Sheila C. Ramesh and Sesi V. Garimella of Cahill Gordon & Reindel, and Thomas D. Goldberg, John W. Ceretta and Jennifer M. Palmer of Day Pitney did not respond to requests for comment.

Read the opinion:

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