

1977 S.C. Op. Atty. Gen. 233 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-305, 1977 WL 24645

Office of the Attorney General

State of South Carolina

Opinion No. 77-305

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QUESTION

Under South Carolina's domestication statutes, §§ 33-23-10 *et seq.*, 1976 Code of Laws, would a non-domesticated foreign corporation holding title to real property in South Carolina and leasing that property to its domesticated subsidiary corporation, be required to comply with the domestication statutes solely by virtue of such lease agreement?

STATUTES, CASES AND OTHER AUTHORITY

South Carolina Code of Laws, 1976, §§ 33-23-10, *et seq.*: [United States Rubber Company v. Query](#), 19 F.Supp. 191; [State v. Ford Motor Company](#), 208 S.C. 379, 38 S.E.2d 242; 36 AM.JUR.2d, Foreign Corporations, §§ 324 and 342; 59 ALR2d 1131, § 2 and 3.

DISCUSSION

Assuming proper procedures and accounting methods between a subsidiary corporation and its parent corporation have been followed such that there is no chance of 'piercing the corporate veil,' a subsidiary corporation is regarded as a separate legal entity vis a vis the parent corporation. [United States Rubber Company v. Query](#), 19 F.Supp. 191. Therefore, business done by the subsidiary within the state which requires the subsidiary to domesticate under §§ 33-23-10, *et seq.*, does not operate so as to require the parent corporation to domesticate.

In determining whether the mere leasing of real property by a corporation will subject that corporation to domestication requirements, it is important to note that the 'doing business' requirements of the domestication statute and the 'doing business' requirement as it relates to the exercise of jurisdiction by the courts of this State over a foreign corporation are quite different. A foreign corporation may be doing business sufficient to bring it within the jurisdiction of a state court and to make it amenable to process of the court and yet not sufficient to obtain a status such that the corporation is subject to the regulatory requirements of a statute dealing with domestication. [State v. Ford Motor Company](#), 208 S.C. 379, 38 S.E.2d 242; 36 AM.JUR.2d, Foreign Corporations, § 324.

The general rule as to the mere holding or leasing of property by a foreign corporation is that is the activity is a mere isolated incident and the corporation is not in the business generally of buying and renting property or buildings, then it need not comply with state domestication statutes. 36 AM.JUR.2d Foreign Corporations, § 342; 59 ALR2d 1131, § 3; 1945-46 Att'y. Gen. Op's 118. This view is in conformity with the 'generally recognized doctrine that 'doing business' in the State by a foreign corporation imports the transaction of its ordinary and customary business therein.' 59 ALR2d 1131, § 2. This would appear to be the legislative intent in the passage of South Carolina's domestication statutes.

It would also appear that were the corporate veil between the parent and subsidiary companies pierced, so that the subsidiary no longer is considered a separate entity, but rather an agent of the parent company or something of a similar nature, then

the parent would be subject to provisions of the domestication statutes and any liabilities which might attach from failure to comply therewith.

CONCLUSION

*2 Assuming proof is shown of the separate nature of a foreign parent corporation vis a vis its subsidiary corporation, the parent company possessing title to real property in the State and leasing such property to its subsidiary, would not be 'doing business' within the meaning of South Carolina's domestication statutes, provided such leasing is not part of the 'ordinary and customary' businesses of the parent corporation.

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