Prepared by the Court

RIVER POINTE HOMEOWNERS ASSOCIATION, INC., a non-profit New Jersey Corporation, Plaintiff, v. PULTE HOMES OF NJ, LIMITED PARTNERSHIP, t/a River Pointe by Del Webb; PULTE HOME CORPORATION OF THE DELAWARE VALLEY; DEL WEBB CORPORATION; PULTE GROUP, INC.; PULTE HOME CORPORATION **CONTRACTORS**: ACIES GROUP; CUNTIS, INC.; NASSAU CONSTRUCTION COMPANY **DEVELOPER APPOINTED TRUSTEES**: CHARLES FOREMAN; BARBARA JAQUETT; PATRICIA SKROCKI; EVERETT R. HANKINS; JAMES MULLEN; RACHEL RICHARDSON; MARY CHURCHILL; SEAN DORNEY; CRAIG COLLIN; JOHN EVANS JOHN DOE DIRECTOR(S), OFFICER(S), AGENT(S) OR EMPLOYEE(S) OF PULTE HOMES OF NJ LIMITED PARTNERSHIP; DEL WEBB CORPORATION; PULTE GROUP, INC. and/or PULTE HOME CORPORATION, fictitious parties; JOHN DOE TRUSTEE(S) OF RIVER POINTE HOMEOWNERS ASSOCIATION, INC., fictitious parties; JOHN DOE CONTRACTORS (1-200), fictitious parties; JOHN DOE (1-100), fictitious parties Defendants v. PULTE HOMES OF NJ, LIMITED PARTNERSHIP, PULTEGROUP, INC., PULTE HOME COMPANY, LLC, PULTE HOME CORPORATION OF THE DELAWARE VALLEY, DEL WEBB CORPORATION, EVERETT R. HANKINS, JAMES MULLEN, JOHN EVANS, SEAN DORNEY, MARY CHURCHILL, PATRICIA SKROCKI, and RACHEL RICHARDSON. Third-Party Plaintiffs, v.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION OCEAN COUNTY DOCKET NO. OCN-L-002491-17 Civil Action CBLP Action **OPINION**

BENDER ENTERPRISES, INC., CARFARO, INC., SAMBOL CONSTRUCTION CORP., JOCAMA CONSTRUCTION CORP., METRO CORP. PLUMBING, INC., ACTION SPORT SURFACES, INC., FINAL TOUCH GLASS & MIRROR, LANDSCAPE MAINTENANCE SERVICES, INC., BRIGHTON EXTERIORS, INC., ALL MONMOUTH LANDSCAPING & DESIGN, INC., UTILITIES CONTRACTING SERVICES, INC., MDM SERVICES INCORPORATED., AQUA MIST IRRIGATION OF NJ, LLC, EASTERN STATE STONE & SUPPLY and ABC COMPANIES 1-10.

Third-Party Defendants.

v.

JOCAMA CONSTRUCTION CORP.

Third-Party Defendant/Fourth Party Plaintiff,

v.

ADVANCED CONCRETE PUMPING SERVICE INC., ALL SEASONS CONSTRUCTION CO., INC.; BR CONSTRUCTION; EURO CONCRETE LLC; J. MASONRY CORP.; J.M. PEREIRA & SONS, INC.; LOPES CONSTRUCTION INC.; RED EAGLE CONCRETE, INC.; RENAISSANCE MASONRY CORP. AND YUNGA AND SON CONSTRUCTION LLC.

Fourth Party Defendants.

Wellerson, P.J. Ch.

This matter having been brought before the Court by Giordano Halleran & Ciesla, P.C. and Bush Seyferth, PLLC, attorneys for Defendants, Pulte Homes of N.J., Limited Partnership,

PulteGroup, Inc., Pulte Home Company, LLC (the successor to Pulte Home Corporation by way of statutory conversion), Pulte Home Corporation of the Delaware Valley, Del Webb Corporation, Everett R. Hankins, James Mullen, John Evans, Sean Dorney, Mary Churchill, Patricia Skrocki, and Rachel Richardson (collectively the "Pulte Defendants"), seeking relief to file an Amended Answer.

In its proposed Amended Answer, the Defendant PulteGroup, Inc., the apex corporation of the Pulte defendants, assumes responsibility for any non-appealable judgement rendered against any Pulte defendant in this litigation. The Pulte defendants have further filed a companion motion to be relieved of the veil piercing discovery obligation of the February 25, 2026, Order. This Court has previously required the Pulte defendants to produce limited veil piercing discovery responses to ensure the plaintiff would not be jeopardized by obtaining a judgment against an insolvent Pulte subsidiary.

The underlying facts and procedural history are summarized here. River Pointe ("River Pointe" or "Association" or "Plaintiff") is an age-restricted residential development composed of 504 single-family homes in Manchester, New Jersey, which Pulte Homes of New Jersey ("Pulte" or "PHNJ" or "Defendant") developed and sold pursuant to the New Jersey Planned Real Estate Development Full Disclosure Act, *N.J.S.A*. 45:22A-21, et seq. ("PREDFDA"). Pulte began sitework construction on River Pointe by Del Webb, in 2004, registering its Public Offering Statement (the "POS") with the Department of Community Affairs (the "DCA") on December 2, 2005. The Pulte Group continued to develop, advertise, and market the Community through a nationwide common promotional plan. The Pulte Group marketed and financed the project through websites for Del Webb, Pulte Home Corporation, and Pulte Group. (SAC ¶16). Neither Pulte Homes nor any of the other Pulte Defendants physically constructed the River Pointe community.

Subcontractors were hired to perform the construction tasks. SAC ¶ 49(a)–(g). PHNJ contracted with individuals who purchased homes in the community. SAC ¶ 49(h). PHNJ provided a copy of the POS, with the required disclosures of the purchaser's rights and privileges, to each prospective purchaser. See, e.g., SAC ¶ 407. The community contains common areas: a clubhouse with an indoor pool, an outdoor pool, tennis courts, a putting green, bocce courts, horseshoe pits, some landscaped grounds, an irrigation system, sidewalks, roadways, the guardhouse and entry gate, drainage basins, parking areas, signs, some common open space and other amenities. POS at 2, 10, 11.

Riverpoint filed suit on September 1, 2017, alleging that there are construction defects in the clubhouse and other common areas of the community, along with financing deficiencies in the pre-turnover operation of River Pointe. The parties have and continue to engage in discovery from 2017 through today. In September 2019, the Association was ordered to file a First Amended Complaint ("FAC") as it wanted to assert claims for additional alleged construction defects and resulting damages. This amendment required the addition of more contractor parties; by the end of 2022 there were more than 27 defendants appearing in the case.

In February 2022, River Pointe propounded 24 document demands and 149 interrogatories on each of the 12 Pulte defendants, under the headings "piercing the corporate veil," "fraud," and "liability." The discovery demands sought all Pulte's records dating back to 2005. The Court ordered River Pointe to limit its discovery requests. While this request was pending, River Pointe continued to seek discovery via third-party subpoenas and deposition notices. In May 2023, upon leave granted, the Pulte Defendants moved for a protective order. During this period, River Pointe filed multiple motions to strike the Pultes' answers and sought reconsideration of the Court's orders denying that relief.

In a September 2023 hearing, the Court proposed that River Pointe ’s veil-piercing and fraud claims should be bifurcated from the remainder of the case, and that they would not be the subject of discovery at this time. The Court advised that it sought a practical solution as to how to move the construction claims against the subcontractors forward efficiently while leaving for later determination the other claims. River Pointe continued to assert it was entitled to the disputed discovery, claiming its demands all relate to the . . . veil-piercing claim.

At a March 14, 2024, hearing set to resolve the various discovery-related motions, the Court reviewed the piercing allegations in River Pointe ’s complaint on the record and described them as conclusory and nonspecific. Per the Court’s directions, the Association filed its Second Amended Complaint on April 12, 2024. (eCourts Transaction ID: LCV2024947475). In its Second Amended Complaint (“SAC”), the Association continues to allege that there are construction defects in the clubhouse and other common areas of the community that have resulted in property damage throughout the community, and financing deficiencies in the pre-turnover operation of the Association. In lieu of answer, Pulte responded on June 20, 2024, with the present motion to strike and dismiss. (eCourts Transaction ID: LCV20241567254).

River Pointe claims that Pulte’s earlier statutory disclosures (made in the public offering statement) did not disclose the then-unknown alleged defects, and that PHNJ did not amend to disclose River Pointe ’s 2017 accusations of defects. Pulte argues that these allegations do not plausibly allege fraud. Pulte asserts that the fraud claims are not pleaded with particularity; River Pointe has not demonstrated that Pulte or anyone else knowingly made any false statement; and River Pointe has not connected any alleged false statements to the alleged common-area construction defects or alleged reserve-funding deficiencies. The defendant further claims that

River Pointe's injuries arise from alleged breaches of warranties set forth in the public offering statement and statutory duties, none of which can sustain a fraud claim.

In its Second Amended Complaint, River Pointe continues to assert that there are construction defects in the clubhouse and other common areas of the community that have resulted in property damage throughout the community, and financing deficiencies in the pre-turnover operation of River Pointe. River Pointe brings 15 claims, sounding in tort, contract, and statute:

I. Negligence;
II. Breach of Express Warranty;
III. Breach of Implied Warranty;
IV. Breach of Contract;
V. Failure to Pay for Benefits Derived;
VI. Failure to Meet Reserve Funding Requirements;
VII. Trustees' Breach of Fiduciary Duty;
VIII. Gross Negligence;
IX. Consumer Fraud;
X. Intentional Fraud;
XI. Negligent Misrepresentation/Fraud;
XII. Fraudulent Concealment by a Fiduciary;
XIII. Violation of the Non-Profit Corporations Act;
XIV. Breach of the Implied Covenant of Good Faith and Fair Dealing; and
XV. Tort—Vicarious Liability.

The allegations in the Second Amended Complaint expand upon the prior allegations to provide additional information regarding those defects. (SAC ¶¶235-247).

The Pulte defendants now seek relief from a previous discovery Order which compelled the production of financial records prior to PulteGroup, Inc.'s acceptance of liability for a judgments against any of its named subsidiaries. A primary reason for incorporation is the insulation of shareholders from the liabilities of the corporate enterprise. Adolf A. Berle, Jr., *The Theory of Enterprise Entity, 47 Colum. L. Rev.* 343 (1947); Note, *Piercing the Corporate Veil: The Alter Ego Doctrine Under Federal Common Law*, 95 *Harv. L. Rev.* 853, 854 (1982) H. Henn, *Law of Corporations* § 146, at 250 (2d ed. 1961). Even in the case of a parent corporation

and its wholly owned subsidiary, limited liability normally will not be abrogated. *Mueller v. Seaboard Commercial Corp.*, 5 N.J. 28, 34, (1950). Except in cases of fraud, injustice, or the like, courts will not pierce a corporate veil. *Lyon v. Barrett*, 89 N.J. 294, 300 (1982).

The law of New Jersey requires courts to recognize and protect the well-established doctrine that "a corporation is a separate entity from its shareholders . . . [and] a primary reason for incorporation is the insulation of shareholders from the liabilities of the corporate enterprise." *State, Dept. of Environmental Protection v. Ventron Corp.*, 94 N.J. 473, 500 (1983). Those "principles are equally applicable when the shareholder is, in fact, another corporation, and hence, mere ownership of a subsidiary does not justify the imposition of liability on the parent." *Pearson v. Component Tech. Corp.*, 247 F.3d 471, 484 (3d Cir.). Thus, "[e]ven in the case of a parent corporation and its wholly-owned subsidiary, limited liability normally will not be abrogated." *Ventron*, 94 N.J. at 500.

The purpose of the doctrine of piercing the corporate veil is to prevent an independent corporation from being used to defeat the ends of justice, to perpetuate fraud, to accomplish a crime, or otherwise to evade the law. , *Telis v. Telis*, 132 N.J. Eq. 25 (1942); *Trachman v. Trugman*, 117 N.J. Eq. 167 (Ch. 1934); *Ventron*, 94 N.J. at 500.

Personal liability may be imposed upon a controlling stockholder of a close corporation where the controlling stockholder disregards the corporate form and utilizes the corporation as a vehicle for committing equitable or legal fraud. *Walensky v. Jonathan Royce Intern.*, 264 N.J. Super. 276, 283 (App. Div. 1993), *certify. denied*, 134 N.J. 480 (1993); *Marascio v. Campanella*, 298 N.J. Super. 491, 502 (App. Div. 1997).

Piercing the corporate veil is a doctrine designed to address an otherwise enforceable judgment that is rendered unenforceable because the defendant is a corporate entity without

sufficient assets to pay it. *See Verni ex rel. Burstein v. Harry M. Stevens, Inc.*, 387 N.J. Super. 160, 190 (App. Div. 2006). Piercing the corporate veil is an equitable remedy whereby "the protections of corporate formation are lost" to eliminate the "fundamental unfairness" that would otherwise result from a "failure to disregard the corporate form." *Ibid.*

Under certain circumstances, courts may pierce the corporate veil by finding that a subsidiary was "a mere instrumentality of the parent corporation." Application of this principle depends on a finding that the parent so dominated the subsidiary that it had no separate existence but was merely a conduit for the parent. Even in the presence of corporate dominance, liability generally is imposed only when the parent has abused the privilege of incorporation by using the subsidiary to perpetrate a fraud or injustice, or otherwise to circumvent the law. *Ventron*, 94 N.J. at 500.

The single business enterprise or single entity rule has not been adopted in New Jersey. *Stochastic Decisions v. DiDomenico*, 236 N.J. Super. 388, 393 (App.Div.1989), *certif. denied,* 121 N.J. 607 (1990); *OTR Assocs. v. IBC Servs.*, 353 N.J. Super. 48, 52 (App. Div.), *certif. denied,* 175 N.J. 78 (2002). New Jersey rejected the implicit adoption of the single enterprise test; instead, in both cases, the court cited to and applied the test for piercing the corporate veil set forth in *Ventron*. 94 N.J. at 500.

The courts of New Jersey have recognized that "piercing the corporate veil is not technically a mechanism for imposing 'legal' liability, but for remedying the 'fundamental unfairness [that] will result from a failure to disregard the corporate form.'" *Trs. of the Nat'l Elevator Indus. Pension, Health Benefit & Educ. Funds v. Lutyk*, 332 F.3d 188, 193 (3d Cir.2003).

"[T]he party seeking an exception to the fundamental principle that a corporation is a separate entity from its principal bears the burden of proving that the court should disregard the corporate entity." *Tung v. Briant Park Homes, Inc.*, 287 N.J. Super. 232, 240 (App.Div.1996).

A party seeking to pierce the corporate veil must establish:

(1) that the entity was "dominated" by the individual owner, or parent corporation, and

(2) "that adherence to the fiction of separate corporate existence would perpetuate a fraud or injustice or otherwise circumvent the law." *Verni ex rel. Burstein v. Harry M. Stevens, Inc.*, 387 N.J. Super. 160 (App. Div. 2006) (citing *Ventron*, 94 N.J. at 500-01).

The first prong of the analysis, "domination," requires a showing that the closely held corporation or limited liability company had "no separate existence" from its owner, and acted merely as the owner's "conduit," "instrumentality," or "alter ego." *Id.* at 200 (citing *Ventron*, 94 N.J. at 501). Relevant factors include undercapitalization, insolvency, the extent of the owner's day-to-day involvement in the entity's affairs, the absence or presence of separate records and accounts, and the entities compliance or non-compliance with business formalities. *Canter v. Lakewood of Voorhees*, 420 N.J. Super. 508, 519 (App. Div. 2011) (quoting *Verni*, 387 N.J. Super. at 200); 18 *Am. Jur. 2d Corporations* § 54 (2004). To establish a fraud, an injustice, or other circumvention of the law, the party seeking to pierce the corporate veil must show the entity had "no independent business of its own," and the owner deliberately undercapitalized the entity, thereby rendering it judgment-proof. *QTR Assocs. V. IBC Sec'ys, Inc.*, 353 N.J. Super. 48, 52 (App. Div. 2002) (citing *Ventron*, 94 N.J. at 501).

In determining whether the first element has been satisfied, courts consider whether "the parent so dominated the subsidiary that it had no separate existence but was merely a conduit for the parent." *Id.* at 501; *See Interfaith*, 215 F. Supp. 2d at 497 ("veil-piercing is proper when a

subsidiary is an alter ego or instrumentality of the parent corporation"). In determining corporate dominance, courts engage in a fact-specific inquiry considering whether the subsidiary was grossly undercapitalized, the day-to-day involvement of the parent's directors, officers and personnel, and whether the subsidiary fails to observe corporate formalities, pays no dividends, is insolvent, lacks corporate records, or is merely a facade. *Bd. of Trs. v. Foodtown, Inc.,* 296 F.3d 164, 172 (3d Cir.2002); *Pearson*, *supra*, 247 F.3d at 484-85; *Marzano v. Computer Sci. Corp.*, 91 F.3d 497, 513 (3d Cir.1996); *Solomon v. Klein*, 770 F.2d 352, 353-54 (3d Cir.1985); *Seltzer v. I.C. Optics, Ltd.*, 339 F. Supp. 2d 601, 610 (D.N.J.2004).

The plaintiff's discovery demands seeking to expose the relationship between the Pulte defendant corporations is justified when there is a specter of an insolvent corporate defendant. To protect the interests of plaintiffs, courts have permitted discovery which is designed to reveal the relationship between parent and subsidiary corporations and the independence and solvency of the subsidiary.

Plaintiffs argue that Pulte Homes, N.J., was undercapitalized. Generally, inadequate capitalization means capitalization is very small in relation to the nature of the defendant's business and the risks attendant to operating such a business. The adequacy of capital is to be measured as of the time of formation of the corporation. A corporation that was adequately capitalized when formed, but which subsequently suffers a financial reversal, is not undercapitalized. Adequate capitalization is a question of fact that turns on the nature of the business of the particular corporation. William Meade Fletcher, *Fletcher Cyclopedia of the Law of Private Corporations* § 41.33 at 652 (perm. ed., rev.vol.1999). This inquiry "is most relevant for the inference it provides into whether the corporation was established to defraud its creditors or other improper purposes

such as avoiding the risks known to be attendant to a type of business." *Trs. of the Nat'l Elevator Indus.*, *supra*, 332 F.3d at 197.

Here, the level of capitalization required for Pulte Homes, N.J. to operate as a viable residential home construction company is without consequence once PulteGroup, Inc. (the parent corporation), accepts liability for any judgment obtained against its subsidiaries. The legal authority for plaintiffs to obtain tax records, corporate minutes, or financial statements, is to prevent the parent corporation from escaping liability of their subsidiaries' illegal or fraudulent activities. The courts of New Jersey have not recognized the doctrine of piercing the corporate veil as an independent cause of action. Plaintiffs must allege a wrongdoing such as fraud, or breach of duty or good faith, to support their theory that a parent corporation was employing a subsidiary to defeat the ends of justice. Here, the plaintiff's allegation of fraud center upon the defendants' obligation to comply with statutory requirements of disclosure within a Public Offering Statement or other notices or advertisements provided to the public.

The discovery being sought to prove domination and control, comingling of funds, and under capitalization, is all directed toward *the reason* why the Pulte defendants created their multi layered corporate structure. The plaintiff has asserted that PulteGroup, Inc., created Pulte Homes N.J. to conduct fraudulent business practices in the name of its subsidiary without consequence. A statutory violation for failing to accurately disclose required information does not necessarily suggest fraudulent intent or an attempt to defeat the ends of justice. However, a judgment against a subsidiary corporation with paltry assets would leave the plaintiff without a satisfactory remedy. To protect plaintiffs against such eventuality, under circumstances where a subsidiary is dominated and controlled by its parent and it has conducted fraudulent activities, the law in New Jersey permits the trial court to pierce the corporate veil and declare that the parent corporation liable for

the judgments against their subsidiaries. Prior to the issuance of an Order compelling the piercing of a corporate veil the court must review the evidence presented by the plaintiff to determine whether the corporate structure and business practices have been developed to commit fraud or evade the process of law. Typically, the party seeking to pierce the corporate veil introduces evidence of day-to-day involvement of the parent corporation in the subsidiary's business operations. Evidence of shared members of Board of Directors and comingling of funds between corporations will also be examined by the Court. Tax returns and financial records are sought in discovery to identify the financial independence of the subsidiary.

Prior to authorizing the veil piercing, the court is called upon to evaluate eight separate factors which identify corporate solvency and the relationship between parent and subsidiary. This analysis is inherently fact sensitive and requires the assessment of multiple factors. *See Lansford-Coaldale Joint Water Auth. v. Tonolli Corp.*, 4 F.3d 1209, 1222 (3d Cir. 1993) (Gross undercapitalization, Failure to observe corporate formalities, Nonpayment of dividends, Insolvency of debtor corporation, Siphoning of funds from the debtor corporation by the dominant stockholder, Nonfunctioning of officers and directors, Absence of corporate funds, Whether the corporation is merely a facade for the operations of the dominant stockholder). *Pearson v. Component Tech. Corp.*, 247 F.3d 471, 484-85 (3d Cir. 2000), *Interfaith Cmty. Org. v. Honeywell Int'l, Inc.*, 215 F. Supp. 2d 482 (D.N.J. 2002).

The plaintiff has sought discovery records to support its theory as to the existence of the second element; "[T]he hallmarks of that abuse are typically the engagement of the subsidiary in no independent business of its own but exclusively the performance of a service for the parent and, even more importantly, the undercapitalization of the subsidiary rendering it judgment-proof." *OTR Assocs.*, 353 N.J. Super. at 52. Here, the need to obtain evidence that PulteGroup, Inc.

subsidiaries did not engage in independent business of their own is unnecessary. Similarly, the need to produce evidence of a judgment-proof corporation for the sole purpose of insulating it from liability is gratuitous. Once the parent corporation assumes responsibility for any judgment rendered against its subsidiaries, the remedy of corporate veil piercing has been granted to the plaintiff. The Court cannot provide the plaintiff with anything more than the relief offered by the defendants. The Second Amended Answer filed by PulteGroup, Inc. declares its responsibility to satisfy any non-appealable judgment of its subsidiaries in this litigation.

When the plaintiff has proved the two-part test to pierce the corporate veil under *Verni,* the obligation of the Court is always the same; it must impose liability upon the parent for the judgments rendered against its subsidiary. The law in New Jersey does not provide a cause of action to plaintiffs permitting them to seek damages for domination and control from a parent corporation. Nor can plaintiffs seek damages for comingling of corporate funds or proof of undercapitalization of a subsidiary. In that regard, "piercing the corporate veil is not technically a mechanism for imposing 'legal' liability, but for remedying the 'fundamental unfairness [that] will result from a failure to disregard the corporate form.'" *Lutyk*, 332 F.3d, 193 (2003).

It is "deeply ingrained in our economic and legal systems that a parent corporation . . . is not liable for the acts of its subsidiaries." *Pearson v. Component Tech. Corp.*, 247 F.3d 471, 484 (3d Cir. 2000); *United States v. Bestfoods*, 524 U.S. 51 (1998) (citations and internal quotation marks omitted). The Federal Courts as well as the Supreme Court of New Jersey have affirmed that the corporate veil may be pierced and the parent corporation may be held liable for the subsidiary corporation's conduct when, *inter alia*, the corporate form would otherwise be misused to accomplish certain wrongful purposes, most notably fraud. *Anderson* v. *Abbott, 321 U.S. 349* (principles of corporate separateness "have been plainly and repeatedly held not applicable where

ownership has been resorted to, not for the purpose of participating in the affairs of a corporation in the normal and usual manner, but for the purpose . . . of controlling a subsidiary company so that it may be used as a mere agency or instrumentality of the owning company"); P. Blumberg, Law of Corporate Groups: Tort, Contract, and Other Common Law Problems in the Substantive Law of Parent and Subsidiary Corporations §§ 6.01-6.06 (1987 and 1996 Supp. The Supreme Court has determined that when the corporate veil is pierced, a parent corporation may be charged with derivative liability for its subsidiary's actions. *Bestfoods*, 524 U.S. 51.

Whether the analysis is under Federal law or the law of New Jersey, under circumstances where the corporate form is misused to accomplish fraud, the courts are required to prevent an injustice and provide the equitable remedy of veil piercing. Here, PulteGroup, Inc. has voluntarily surrendered its insulation from liability afforded by its corporate structure. The equitable remedy of corporate veil piercing need not be employed when the defendant corporation amends its answer and accepts liability for judgments rendered against its subsidiaries. Once the parent corporation has accepted liability for its subsidiaries, granting any request for veil piercing discovery is an exercise in futility. Here, the defendants have voluntarily pierced and removed their own veil. PulteGroup, Inc. now stands as the party responsible for the actions of its subsidiaries.

The plaintiff takes great pains to examine the impact of the Comparative Negligence Act (CNA) and the Joint Tortfeasors Contribution Law (JTCL). There is little contest as to the applicability of these laws to the issues in this case. Significantly, however, the Pulte defendants are the only defendants being charged with fraud. While the plaintiff asserts several different theories of fraud against the Pulte defendants, none of the defendants in the negligent construction counts have been accused of any fraudulent conduct. Under circumstances where the plaintiff is seeking damages for both intentional and negligent conduct, the jury must separate the conduct

into two distinct categories. *Blazovic v. Andrich*, 124 N.J. 90 (1991). First, the jury must evaluate the percentage of fault between the parties alleged to have acted intentionally. *Id*. The jury is instructed to return a verdict ensuring that all the defendants who have been accused of fraud are segregated into a group where their individual fault is assessed only among the other intentional tort defendants. *Id*. The collective fault of all of the intentional tort defendants must add up to 100%. *Id*. Then the jury shall separately determine the fault of the negligent defendants among only those defendants who have been determined to have acted negligently. *Id*. Again, the combined percentage of fault of each of the negligent defendants must add up to 100%. *Id*. The last step is for the jury to assign a percentage of fault to the group of the intentional defendants, and a percentage of fault to the group of negligent defendants, with the combine fault of both defendant groups adding up to 100%. *Id*.

Despite the instructions of Justice Stein in *Blazovic,* the plaintiff asserts that the trial court should permit the plaintiff to continue in its search for discovery to reveal the responsibilities and relationships between Pulte's corporate entities along with the financial obligations of each entity. 124 N.J. 90 (1991). The plaintiff's claim against the Pulte defendants is once based in fraud. Fraud is misconduct which the defendant knew or should have known would be relied upon by the plaintiff to its detriment. The plaintiff may continue to obtain discovery indicating that the Pulte defendants conducted themselves in a fashion where their actions or words perpetrated a fraud upon the plaintiff. The plaintiff seeks damages for intentional fraud, consumer fraud, fraudulent concealment by a fiduciary, and breach of good faith and fair dealing. Each of the plaintiff's fraud counts require proof of actions committed by the defendant. The relationship between the Pulte defendants and the financial viability of the subsidiaries is not an element of proof to be carried by the plaintiff. In this instance the plaintiff will suffer no harm from Pulte's comingling of

corporate funds or undercapitalization of a subsidiary. The discovery the plaintiff seeks from the Pulte defendants regarding their corporate structure and finances is not evidence of a fraud committed upon the plaintiff.

The analysis of the plaintiff's burden to prove its fraud counts is made more difficult by the obtuse and vague references asserted by the plaintiff in its two volume, six-hundred forty-eight page second amended complaint. Regardless of the allegations ultimately pursued by the plaintiff, the corporate relationship between the Pulte defendants, and their internal financial structure has no bearing on whether the plaintiff suffered harm from the actions of the defendants. The discovery which the plaintiff wishes to obtain is necessary when credible allegations of lack of corporate independence and creation of an insolvent subsidiary are placed before the Court. Should the plaintiff prove that corporate entities have siphoned off the assets of subsidiary companies with the intent to render them judgment proof, the fraud in question is conduct that frustrates the plaintiff's ability to collect on a judgment. As Judge Ciancia noted:

> Well over a hundred years ago in *Terhune v. Hackensack Savings Bank*, 45 N.J. Eq. 344, 45 N.J. Eq. 565, 19 A. 377 (E. & A.1889), our highest Court held that to organize a corporation and convey to it all one's assets for the purpose of thwarting a creditor is fraud. It is no less fraud where the intent is shown and the consequence is clear but the perpetrators have been able to structure their wrongdoing so that resources otherwise available to the debtor are made to vanish.
> *Karo Mktg. Corp., Inc. v. Playdrome Am.*, 331 N.J. Super. 430 (App. Div. 2000)

Here, there is no ability of the parent corporation to frustrate the plaintiff's collection of a debt. PulteGroup, Inc., has indemnified its subsidiaries. Plaintiff is entitled to introduce evidence of any fraudulent actions of the defendants which have caused harm to the plaintiff. The corporate veil piercing evidence which the plaintiff seeks has been rendered moot since the parent corporation accepted responsibility for judgments awarded against its subsidiaries.

Historically, the responsibility to determine whether the corporate veil should be pierced was left to the sound discretion of the trial court. The court was empowered to make this equitable determination only after weighing the factors which identify a corporation's day-to-day functions, its authority to make its own determinations, financial viability, and the purpose for its creation. Should the courts of New Jersey cede their traditional power to a jury, the protection of corporate independence will be abolished. The public does not have the right to obtain information about the financial transactions of a corporation. Nor does the public have the right to obtain information about the conduct and control of the corporate decision-making processes. Should the jury be obliged to make decisions on piercing the corporate veil, under circumstances where they decline to do so, the inner working of the corporate entities will be laid bare for the public to examine. The presumption is to protect the independent business judgment of corporate entities. Only when evidence is presented to the court for its review out of the eyes of the public can the corporation be assured that its business activities will not be adversely affected if the application to pierce the corporate veil is unjustified. The allegations and evidence presented to the jury in a public trial may irreparably harm a defendant corporation under circumstances where the jury declines to impose the sanction of piercing the corporate veil. A judicial determination of veil piercing factors under the protection of non-disclosure agreements is the better practice in these circumstances.

Now with the liability of the apex corporation being stipulated, the plaintiff pivots its argument to suggest that veil piercing discovery is required to permit the jury to more accurately assign percentages of fault under the CNA and the JTLA. Plaintiff suggests that if the jury evaluated the reasons why and how the Pulte defendants interacted with each other, they could better assign fault among the intentional tort defendants as well as the fault to be assigned between the group of intentional tort defendants and the group of negligent defendants.

However, the alleged damages suffered by the plaintiff has no nexus to the corporate structure and relationships, and the financial assets and obligations of the Pulte defendants. The fraud which must be proven by the plaintiff is the existence of false allegations or deceptive practices committed by the Pulte defendants. These deceptive practices or false allegations are known to the plaintiff; they are the basis of the plaintiff's claim for damages. The domination and control of the parent corporation or the financial obligations between parent and subsidiary has no connection to the fraud being alleged.

The second prong of the veil piercing test under *Ventron* is the ability of separate corporate existence to commit a fraud or injustice. 94 N.J. at 500. the injustice to be proven is the creation of an insolvent subsidiary to benefit the parent and leave a plaintiff without a remedy. The only remedy the plaintiff seeks and the only remedy the court can afford is money damages. Here, the plaintiff has been assured through the Amended Answer that any money damages awarded against the Pulte defendants will be the responsibility of PulteGroup, Inc.

Through its demand to produce veil piercing discovery the plaintiff has conflated the purpose of the veil piercing doctrine. The doctrine's purpose is not to expose the relationships and financial obligations between corporations, rather it is to remedy the injustice of permitting a solvent parent corporation to avoid liability of a judgment proof subsidiary which it controlled. Here the production of the Pulte defendants tax records serves no purpose. The plaintiff suggests its need for corporate financial records is to define for the jury the domination of the subsidiary through the financial obligation it held to the parent. The plaintiff claims any facts surrounding and supporting the parent corporation's attempt to avoid liability will permit the jury to better assign the correct percentage of fault to the apex corporation. If PulteGroup, Inc. is to be assigned fault for the damages suffered by the plaintiff it must be a determination based on the actions of

PulteGroup, Inc. which proximately caused damage to the plaintiff. The information contained in tax returns was not relied upon by the plaintiff. The CNA and the JTLA require the intentional tort defendants to be assigned percentages of fault as a group. Here, the Pulte defendants are the only defendants within the class of intentional tort defendants. The percentage of fault assigned to each of the Pulte defendants becomes an academic exercise because PulteGroup, Inc. does not contest its liability for judgments entered against any of its subsidiaries. The more important question for the jury to determine is the percentage of fault borne by the intentional tort defendants as a group and the percentage of fault assigned to the negligent defendants as a group. This determination becomes significant because each group contests the amount of fault it should ultimately bear. The desire to introduce the Pulte defendants veil piercing discovery will not assist the jury in determining the percentage of fault to be assigned to the group of negligent construction defendants. While veil piercing discovery may provide insight as to the liability among the individual Pulte defendants, the tax returns, financial records and corporate obligations will only serve as a distraction for the jury. The individual liability of each Pulte defendant is without consequence because each and every member of the class of intentional defendants is a Pulte corporation. Once the parent corporation accepts liability for each of its subsidiaries the percentage of fault between the subsidiaries become meaningless. This would not be the case if a defendant other than a Pulte defendant was included in the group of intentional defendants and liability was contested between members of the group. Production of Pulte defendant financial records does not assist the jury because when the jury assesses the fault of the group of negligent construction defendants in comparison to the group of intentional defendants, the financial assets and liabilities of the Pulte defendants have no nexus to the fault of the group of intentional defendants. Moreover, there will be no financial records of the negligent construction defendants for the jury to compare

in their determination of relevant fault between the two groups of negligent and intentional defendants. These two distinct and separate categories of fault are not easily confused.

Support for denying the production of tax records is found in the plaintiff's obligation to satisfy the heightened standard established in *Ullmann v. Hartford Fire Ins. Co*., 87 N.J. Super. 409 (1965) which requires demonstrating that:

(1) the tax records are relevant to the subject matter of the action or the issues raised;

(2) there is a compelling need for the records because the information contained within them is not otherwise readily obtainable; and

(3) disclosure would serve a substantial purpose .

This standard reflects a balancing of the public policy favoring confidentiality with the need for discovery in litigation. Additionally, under , N.J. Stat. § 54:50-8. tax records maintained by the Division of Taxation are considered confidential and privileged. As Judge Weinfeld said in *Cooper v. Hallgarten & Co.*, "Public policy favors the nondisclosure of income tax returns. Criminal sanctions for unauthorized disclosure underscore this policy." 34 *F.R.D.* 482 (*D.C.S.D.N.Y.* 1964).

Tax returns are declared confidential by both federal and New Jersey statutes. Disclosure of tax returns and associated tax filings is permitted only in limited circumstances in the absence of waiver or consent. For the decades since the court's seminal opinion in *Ullmann* our courts have enforced that confidentiality pursuant to a rigorous set of standards. A civil litigant can only obtain an opposing party's tax filings through discovery by demonstrating to the court the requested documents meet a heightened standard.

In the wrongful discharge case of *Parkinson v. Diamond Chemical Company, Inc.*, 469 N.J. Super. 396 (2021), the plaintiff sought in discovery the tax filings of his former employer and the president of the company, along with the company's financial statements. The plaintiff contended

those records are likely to contain information that could support his affirmative claims. As part of his argument for compelling disclosure, plaintiff asserts the tax filings of a business deserve less confidentiality than the filings of an individual taxpayer and the rigorous *Ullmann* test does not apply. Judge Sabatino explained that the tax filings of corporations and other businesses receive the same presumption of confidentiality as individual tax records, and that the *Ullmann* test applies to them as well.

This Court would be naive to overlook the impact of producing the financial records of the Pulte defendants. Should tax records be presented to the jury, the assignment of fault is likely to be unduly influenced by the financial status of each defendant. Significantly, no financial records are being sought from the negligent corporate defendants where treble damages are not available to the plaintiff. The financial status of the defendants has no impact on the wrongful conduct of each defendant. The jury's obligation is to determine fault based upon the defendants' actions which proximately caused the plaintiff's harm. The content of tax returns will not assist the jury in coming to their conclusion.

Neither the CNA nor the JTLA provide a vehicle for plaintiffs to obtain financial records of defendant corporations. The remedy of the veil piercing doctrine is to assign liability to a parent corporation. The right of a plaintiff to obtain corporate financial records once the apex corporation has accepted liability for judgments against its subsidiaries, appears to be a case of first impression. For the reasons set forth herein, this Court declares that with the filing of PulteGroup, Inc.'s Second Amended Answer accepting liability for judgments of its subsidiaries, the plaintiff has no right to obtain the veil piercing discovery it seeks.

Accordingly, this Court grants the motion of the Pulte defendants to amend its answer and terminates the obligation of those defendants to produce corporate financial records, employee

records, and disclosures previously required by this Court to consider the equities of piercing the corporate veil protecting the Pulte defendants.