



Jan 11, 2024

Categories:

[General Litigation](#)

[Gibbons](#)

Corporate Counsel Is Not Your Counsel: Communications Between Shareholders and Corporation Counsel Are Not Necessarily Privileged

You founded, own, and run your company. So, it is natural to assume that your company's lawyer is your lawyer, right? While the assumption may be natural, the courts are firm in differentiating an attorney's responsibilities to a corporation versus an individual shareholder. One who disregards this distinction may find that communications believed to be confidential and privileged are subject to discovery in later litigation.

"A lawyer employed or retained to represent an organization represents the organization as distinct from its directors, officers, employees, members, shareholders or other constituents." [NJRPC 1.13\(a\)](#). Shareholders of a closely held corporation are no exception to this rule and are not entitled to any presumption of privilege distinct from the corporate entity.

The New Jersey Appellate Division recently emphasized this point in [Royzenshteyn v. Pathak](#), where two shareholder-owners of a closely held corporation unsuccessfully appealed a trial court order that compelled production of allegedly privileged communications between the plaintiffs and corporate counsel.

In *Royzenshteyn*, the plaintiffs retained corporate counsel for a transaction that transferred majority ownership of their corporation to the defendants. That transaction was completed in 2015. Soon thereafter, the parties' relationship soured, and, in 2018, the plaintiffs retained new counsel to file a lawsuit that challenged the 2015 transaction. During discovery, the plaintiffs asserted attorney-client privilege over communications with corporate counsel made in 2015. The defendants disagreed with the plaintiffs' assertion of privilege, filed a motion to compel production, and argued that the corporation, not the plaintiffs, held the right to waive privilege over

the subject communications.

The Appellate Division first remanded the matter to the trial court for further proceeding because the court “could not conclude whether [corporate counsel] represented just [the corporation] or jointly represented [the corporation] and plaintiffs.” On remand, the trial court assigned a special master to untangle the issue. Following a plenary hearing, the special master found that corporate counsel “had represented only [the corporation] and [that] there was no express or implied attorney–client relationship between [corporate counsel] and plaintiffs.” Furthermore, “the retainer letter clearly identified [the corporation] as the only client and stated that if any [other] individual were to be represented, there would have to be a written agreement memorializing that representation.” The special master concluded that “plaintiffs did not carry their burden to prove that they had been individually represented by [corporate counsel].” The trial court adopted the special master’s findings and recommendations, memorializing them in a ruling and order.

On the matter’s second appeal, the court determined that the special master’s findings were supported by substantial credible evidence. The court agreed that there was “no evidence [of] an express or implied attorney–client relationship between [counsel] and plaintiffs.” Accordingly, the court remanded with instructions to produce the subject documents to all named defendants because the corporation, not the plaintiffs, held the attorney–client privilege.

Whether a shareholder, director, or owner, you must be aware of the line between yourself and your corporation. The distinction may blur in meetings, coffee conversations, and fundraisers; however, it is not likely to blur or bleed under the scrutiny of our courts.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.