4) Please type the answer to Question 4 below.

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When finished with this question, click to advance to the next question.
(Essay)

======== Start of Answer #4 (1254 words) ========

What legal theory can **Supplier** reasonably seek to recover against Art on its claim against Retail?

Supplier can ask the court to pierce the corporate veil or ask the state for dissolution to personally recover against Art. We need to see if there was a valid corporation and if a dissolution can occur through ultra vires or breach of fiduciary duties by Art.

Corporation

Dejure Corporation

A valid corporation follows through with the formalities of authorized shares, purpose of the corporation, filing the agent's name and address, filing the incorporator's name and address, and filing the name of the corporation. Here, Art paid 100 dollars for its authorized shares of stock, the purpose of the corpration was for a business not specifically described in the facts, the agent's name and incorporator's names are not mentioned, and the name of the corporation is Retail, Inc.

Defacto Corporation

A defacto corporation is one where it is not validly incorporated but is held out to be a corporation in good faith and will be given its valid status even without following the requirements. Here, the facts state that Art incorporated Retail, Inc. so it will be a valid corporation instead.

Closed corporation

A closed corporation is a closeldy held family corporation. Here, Art along with his two family members comprised the board of directors, thus making this a closed corporation.

Fiduciary Duty

Duty of loyalty

Directors are fiduciaries of the corporation and hold the duty of loyalty along with the duty of care. The duty of loyalty is when the director should place the corporation's interests above his own and not usurp the corporation's opportunity. Here, Art breached his duty of loyalty when he started taking some of Retail's inventory home without paying for it because he personally benefitted from this inventory while looting the corporation's inventory. Art also breached his duty of loyalty by self dealing from buying 30% of the inventory from his own company that he owned - XYZ Co.

Duty of Care

Directors also owe a duty of care as in what a reasonable prudent person would do in a similar position. Here Retail's board approved a contract to buy 30% of the inventory of XYZ company owned by Art the president. This was a breach of duty of care because Art and the board probably couldve investigated other companies to get cheaper prices instead of purchasing inventory from his own company.

Piercing the corporate veil

Directors, shareholders, and officers are normally shielded from liabilites of the corporation unless they engage in the following acts where the courts will pierce the corporate veil to get to the liable parties directly.

Fraud

If the parties use the corporation in a fraudulent way, the courts will pierce the corporate veil. Here, if the court finds that Art incorporated Retail to use it as a form of fraud in inducing Supplier to sell equipment, then the Art would be held liable. However, Art would assert that there is no clear evidence that he used the corporation as fraud.

Estoppel

If the parties hold the corporation out in a manner different from the way they are utilizing the corporation to its detriment, the court can pierce the corporate veil. Here, if the courts find that Art was holding the corporation out to Supplier to get his money with misrepresentation, for example, then the court can pierce the corporate veil to make Art personally liable.

Alter Ego

If the parties use the corporation as a disguise to hide their activities of self dealing, and using it as a front for other activites, the courts will pierce the corporate veil. Here, we can infer that Art created this corporation to benefit himself via the purchase of inventory through his own company XYZ and from stealing the Retail inventory for personal use. Therefore, if the court finds for an alter ego, then they would pierce the corporate veil.

Undercapitalization

If the parties didnt put in enough funds to operate the corporation, the court will pierce the corporate veil. Here, Art funded the corporation 50,000 dollars but at the end only had assets limited to 5,000 cash and owed Supplier and Barbara as well. If the courts find that 50,000 was not enough to fund a corporation for this kind of purpose of the corporation, they will pierce the corporate veil and hold the directors and shareholders liable.

Therefore, Supplier can go after the corporation to recover the 10,000 owed. But since the corporation has deficient assets Supplier can ask the courts to pierce the corporate veil if they find out that fraud, alter ego, or undercapitalization took place, so Art can be held personally liable.

Dissolution

Supplier can also seek dissolution from the state and go after Art personally. Supplier can seek dissolution by accusing the corporation of going outside the scope of its business.

Ultra Vires Act

An ultra vires act is where the corporation exceeds its scope of business and purpose. Here, Supplier can argue that Retail, Inc. exceeded its scope by doing too many things at once as in approving a 10 year lease for a store, buying 30% invnetory from XYZ.

Other failures:

Annual shareholders meeting.

A corporation should have annual meetings attended by the shareholders. Here, the facts state that some years, Retail never met.

Fundamental corporate change

A fundamental corporate change could constitute approving a contract to buy 30% of the inventory of XYZ company. A resolution by the majority of the directors should pass which should be voted by the majority of the shareholders. Here, none of this took place. Voting could've also occured by proxy voting if the shareholders couldnt attend. Quorum (majority) did occur when the board approved but it was never finalized by the majority of the shareholders.

Barbara's cause of action

Derivative suit

A derivative suit is when the shareholder brings suit for the injury to the corporation. The shareholder must have owned stock prior to and during the pendency of the suit. The shareholder must also make a written demand to the directors first but can bypass if it is futile. The shareholder must also be able to adequately represent the corporation. Here, Barbara owned 20% of the Retail's stock before her suit and if she holds it during the pendency she can bring a derivative suit against Art for the injury to the corporation. Art brought injury to the corporation by stealing inventory from it and also buying 30% of the inventory from his own company that might not be the best interests or moreso even damaging to the Retail corporation. The judgement won would go towards the corporation and not the shareholders personally.

Personal suit

A personal suit is brought by the shareholder personally rather than through the representation of the corporation. The judgement won would go towards the shareholder personally and not to the corporation. Here, Barbara could also bring a personal suit against Art because she incurred damages as a 20% shareholder. Art's mismanaging of the Retail corporation is bringing financial harm to Barbara because she is losing out on her 20% value of the company.

Art collect from Retail?

The creditors would be first in line to collect from corporation. Here, there is only 5,000 dollars left in assets which are deficient to pay the creditor Supplier the 10,000 owed. If Retail is forced into bankruptcy court, there would be no assets leftover from Retail that Art could recover from.As an outsider creditor, Supplier would be first in line to get his money.

Question #1 Final Word Count = 1254