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The Delta Loan

General Partnership

A general partnership (GP) is a partnership consisting of 2 or more people to form a business for profit. GP have ability for partners to management and control the partnership, have equal share of profits and the losses have to be proportional to the profit sharing. The partners have unlimited liability for acts under the partnership. A partner has either express or apparent authority in making decisions that binds the partnership.

Ann, Bob, and Claire all joined together to form a business for profit, a retail shoe store called ABC shoes. They each took a role in the day-to-day operations and agreed to split the profits equally and thus formed a partnership. Ann, as a general likely has express authority to make decisions on behalf of ABC as she was one of the partners and had control in the management of the business, but also acted with apparent authority when signed the loan papers as "Ann for ABC shoes," giving reliance that she was holding out to act on behalf of the partnership. Because ABC was a partnership at this point and the partners have unlimited liability, Ann is liable for the Delta Loan. Ann may seek contribution from Bob and Claire for the losses she pays.

Promoters

A promoter is one who enters into contracts on behalf of a corporation not yet incorporated. Promoter's are jointly and severally liable for the contracts they enter into before the corporation's formation and remain liable even after the corporation is formed. The corporation is not liable, unless there is novation, in which all parties agree for the promoter's to be released from liability or the corporation assumes the benefits of the contract.

Here, ABC was yet to be formed as a corporation and Ann entered into a contract with Delta Bank for a loan for marketing expenses for ABC. There is no indication that there was novation between the bank, the corporation or Ann as a promoter for ABC Incorp to take over the Delta Loan. Additionally, ABC did not form the corporation until two months later and Ann took out the loan for ABC shoes when it was a partnership, before becoming a corporation. It is likely that Ann would be liable as an promoter.

It is likely that Ann would be liable for the Delta Loan as a general partner and a promoter. Bob and Claire may be likely liable too as general partners under ABC shoes.

The Echo Loan

De Jure Corporation

A de jure corporation is one that formally complies with the statute formalities of forming a corporation. Under a de jure corporation, the shareholders are shielded form personal liability from actions that are undertaken by the corporation.

Here, the facts indicate that ABC was validly incorporated and thus is a de jure corporation.

Duty of Care

Directors and officers owe a duty of care to the corporation. The duty of care means for the directors/officers to act with good faith, as reasonable person would regarding their own management and money, and in a manner that puts the corporation's interests first.

Here, Ann is a president of ABC and director. Ann has a duty to act with good faith in her decisions regarding the corporation and put the corporation's interest first.

Business Judgment Rule

The business judgment rule is about the director's decisions regarding the corporation. The director's must make decisions regarding the corporation (1) in good faith, (2) the decision must be informed, (3) without conflicts and (4) for the corporations interest. The courts will find that the business decisions are informed and made in good faith, unless the directors acted with negligence or recklessness in making their decisions.

Ann, Bob, and Claire made the decision to borrow \$40,000 for business expansion from Echo Bank. The facts do not indicate that there was any conflicts with this loan and the three of them discussed the loan and Ann moved forward with it, with the approval of Bob and Claire. When the directors are making decisions on behalf of the corporation, they must make the decisions informed and although they didn't rely on any outside opinions or data, they did consult with each other and Ann received their approval before moving forward with the loan. The purpose of the loan was expanding the corporation, so they were trying to put the interest of the corporation first, by expanding and hopefully making more of a profit for it.

It is likely that the corporation will be liable for the Echo Loan, as the directors made the decision in good faith and were putting the corporation's interests first.

The Big Shoe Co. Contract

Duty of Care & Business Judgment Rule

Supra.

As mentioned, Ann owes a duty to the corporation as a director. Here, in the same month as taking out the previous loan (Echo) she also entered into a \$50,000 contract with Big Shoe Co. to buy inventory. Ann may be putting the interests of the corporation first because she is trying to secure inventory and expand the business, but her decision was not made in good faith because she made the decision on her own and did not consult with Bob or Claire. Additionally, Ann's decision is not informed because she did not consult with them. Ann was reckless in entering the contract on behalf of the corporation after she just took out a \$40,000 loan and she did not consult the decision with the other directors.

Due to Ann's decision not being in good faith nor informed, it is likely that she will be held liable for the contract with Big Shoe and not the corporation.

Piercing the Corporate Veil

Shareholders are typically not liable for the acts of the corporation, but under piercing the corporation veil courts may find shareholders liable under the alter ego doctrine, ignoring corporate formalities, undercapitalization, fraud or injustice. Under the alter ego doctrine, the separate personalities of the shareholder and the corporate no longer exist, because the shareholder treats the corporation as their own and commingles.

Here, a court may pierce through the corporate veil for undercapitalization. Within 6 months of the corporation being formed Ann took out a loan and entered a contract with Big Shoe, which due to low demand and economic recession, the corporation has not yet paid for. The court may likely pierce the corporate veil and hold Ann liable for the contract.

It is likely that Ann would be liable for the contract for Big Shoe.

Damages for Peter's Injuries

Tort Liability

A corporation may be liable for employees or directors acting on behalf of the corporation in furtherance of the scope or goals of the corporation.

Here, Fred was an employee of ABC Incorp. who worked at the store and occasionally would pick up inventory. Fred was driving to pick up inventory when he negligently injured Peter, who filed a lawsuit for personal injuries. Fred picking up inventory was something that he would do and the inventory was in furtherance of the corporation, getting product for it, and Fred was acting within in his scope of employment. As a result, Fred was acting in furtherance of the Corporation and was acting within the scope of his employment. The damages that Peter is seeking for his personal injuries can be imputed to the corporation. Therefore, the corporation can be liable for Peter's injuries.

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