4)

1.

Formation of Corporation

A corporation is an entity that shields its directors and shareholders from being personally liable form the debts of the corporation. A corporation is formed when articles of incorporation is filed with the Secretary of the state. AOI must include the name and addresses of the directors, name of the corporation, address of the corporation, and amount of share available.

Here, the formalities are completed because when the AOI was sent to the correct address it included all formalities and properly proceeded.

Thus, corporation is formed.

De Facto Corporation and Estoppel

A corporation that is not properly formed is a De Facto corporation. A de facto corporation that acting as properly formed may not deny the liability. A party who enters into a contract with a improperly formed company also may not deny their liability.

Here, at the time Beth purchased initial inventory from Supplier the company was not properly formed yet because the previously mailed AOI came back since it was sent to wrong address. The company was acting as if it was properly incorporated since Nonetheless, Beth entered into a contract with Supplier as if it was incorporated and opened their doors for business.

Thus, parties may not deny liabilities.

Closely Held Corporation

A corporation that consist maximum of 35 shareholders is called closely held corporation. Directors of closely held corporation may be held liable personally.

Here, since there is only two shareholders and directors Anne and Beth, they may be held liable personally.

Thus, the corporation is closely held.

Pierce of Corporate Veil

Directors and shareholders are generally are not personally liable for the debts of the corporation. However, a third party may pierce the corporate veil if the corporation is not following the formalities, is under capitalized or directors are using the corporation as their alter ego.

Here, the Toy Shop is not following the corporate formalities because Anne and Beth were

spending such long hours working to make the business profitable and they did not hold any shareholder, board or incorporation meetings. Although shareholder meeting are not always required and can be held once in a hear the board of directors meeting must be held regularly. Moreover, the toy company is likely under capitalized since it had only $1000 dollars of capital initially. Moreover, the purchase of $50000 worth of initial toy inventory only week after suggest that it did not have enough capital. Although it is common that a corporation enters in installment contracts, the fact that the corporation failed only after six months with zero cash suggests that it did not have proper capital.

Thus, Supplier may pierce the corporate veil and sue Anne and Beth for both purchases.

2.

Business Judgement Rule

A director may be protected from lawsuits if their decisions are taken in good faith and for the best interest of the corporation.

Here, Beth will argue that the initial and additional purchases were made in good faith and for the best interest of the corporation because to carry on the business the Toy Shop needed inventory to make sales and raise capitals. Moreover, Beth will argue that she believed in good faith that they can pay the debts in 12 month installments as they raise capitals. Since the online sale competition was foreseeable and the company already was in dept when the second purchase was made her argument will likely fail.

Thus, BJR will not apply.

3.

Distribution of Debts

Since the corporation has zero cash Supplier will sue Anne and Beth personally.

Partnership

Partnership is crated when 2 or more person come together to carry out a business to generate profit. Generally partners are liable for the debts of the partnership jointly and severally.

Here, Anne and Beth likely created a partnership when they decided to start a new business to carryout for profit and they were equal owners. if Supplier may not bring action against Toy Shop Co. they may nonetheless bring action against the partners Anne and Beth.

Thus, there is Partnership.

Agency Theory

A partner is an agent of the partnership. The agency may be created with express authority,

implied authority, or apparent authority. Apparent authority occurs when third party reasonably believes that a party has authority to act as an agent of the partnership.

Here, Supplier reasonably believed that Beth has authority to act on behalf of the Toy Shop Co because Beth as a equal owner and was secretary. Since Beth acted on behalf of the partnership, she may be hold liable for the actions for initial and additional purchases.

Thus, there is apparent authority.

Conclusion

Supplier may sue Anne and Beth personally.

END OF EXAM