4)

A. What viable claims can Supplier assert regarding the $25,000 and the $30,000

Supplier v. Toy Co ($25,000 Debt)

Breach of contract

A breach of contract is when a party fails to perform, however, the courts will look at whether the agent who signed the contract had the prinicipal's authority to enter into the contract when finding liability.

Here the fact pattern tells us there is a valid contract, where Beth purchased $50,000 worth of initial toy inventory from supplier that was supposed to be paid in 12 monthly installments. Beth signed the contract as "Beth, Treasury/Secretary of Toy Shop Co. The court would find that there was a breach of contract since Beth ended up not paying off the full amount she owed to the Supplier (she still owes $25,000). However Toy Co will argue that Beth did not have authority to sign the contract since the corporation was not incorporated.

Thus, there was a breach of contract and supplier can bring a valid action against Toy Co.

Defacto corporation

Defacto corporation is a corporation by right. Meaning the articles of incorporation were properly filed with the state secretary and the corp is valid.

Here there is no defacto corporation since Toy Shop co. because even though they sent in the Articles of Incorporation, they were sent back because Anne had not mailed them to the right address.

Thus, there is no valid defacto corporation in regard to Toy Co during its first contract with Supplier.

Dejure Corporation.

A dejure corporation is a corporation that is still valid even if it does not have the formalities of a regular corporation.

Here, Supplier would argue that during the first contract Toy Co was a Dejure corporation, since it had the intent of being a corporation regardless if it lacked certain formalities because Annes application was rejected.

Thus, the court would find that Toy Co was a dejure corporation and it is estopped from asserting it as a defense in not paying the contract.

Express Authority

Express authority is when an agent has express authority to act on behalf of the corporation.

Here, Toy Shop Co gave Beth express authority, Beth had equal ownership in the business and was its treasurer and secretary and therefore had express authority to enter into this contract

on behalf of toy co.

Thus, Beth was acting under Express authority for Toy Shop Co.

Apparent Authority

Apparent authority is when an agent acts on behalf of the principal and based on prior conduct or customs, the 3rd party reasonably relies on this authority to bind the principal to the contract.

Here, there is no apparent authority since neither Beth nor Toy Shop Co had contracted with Supplier previously.

Thus, there is no apparent authority.

Vicarious liability through Agent

A principal is liable for its acts of its agents, and for any contracts the agent gets into on behalf of principal.

Here, Toy Shop Co is liable for the acts of Beth and Supplier would likely be able to recover from Toy Shop Co, since Beth was acting as its agent.

Thus, Toy Shop Co is liable for the $25,000 for the contract signed by Beth.

Supplier v. Toy Co for $30,000 Debt

Apparent Authority

Apparent authority is when an agent acts on behalf of the principal and based on prior conduct or customs, the 3rd party reasonably relies on this authority to bind the principal to the contract.

Here, Supplier Co is going to argue that Beth purchased these toys based on apparent authority, Beth already had established a relationship with Supplier when she signed as an agent of Toy Shop Co.

Thus, Beth acted with apparent authority.

Vicarious liability through Agent

A principal is liable for its acts of its agents, and for any contracts the agent gets into on behalf of principal.

Here, the corporation is already established and the articles were properly accepted therefore there is no argument that the contract was signed by Beth as an agent of the corporation. When Beth signed the contract with Supplier for payable upon 12 monthly installments she signed as Secretary/Treasurer of Toy Shop Co making them Liable for the contract.

Thus, Supplier would likely obtain a judgement against Toy Shop for the acts of Beth,.

Supplier v. Ann

Piercing the Corporate Veil

Normally a plaintiff cannot pierce the corporate veil or the alter ego of a corporation, unless there is showing that the corporation participated in fraud, was engaged in business when they knew they were out of money etc.

Here, Supplier is going to try to Pierce the corporate veil of Toy Shop Co and go after Anne personally for the acts of Beth on behalf of the corporation. Corporation is going to say that Anne should be held liable for the acts of Beth and the corporation since he cannot recover from the corporation. Ann however is going to argue that there was no way they could have known their business was going to fail at the time of the initial purchase and as such the corporate veil should shield them.

The court would likely allow supplier to pierce the corporate veil for Anne for the $25,000 or for the $30,000 because the business is failing and it has no cash or assets to recover from.

Supplier v. Beth

Piercing the Corporate Veil

Normally a plaintiff cannot pierce the corporate veil or the alter ego of a corporation, unless there is showing that the corporation participated in fraud, was engaged in business when they knew they were out of money etc.

Here, Supplier is going to try to Pierce the corporate veil of Toy Shop Co and go after Beth personally for the acts of Beth on behalf of the corporation. Corporation is going to say that Beth be held liable for her acts and signing on behalf of the corporation since he cannot recover from the corporation. Similarily Beth might try to argue that the viel should not be pierced because she did not know her business would fail when she took on either contract and signed as Toy Shop Co.

Thus, the court would likely find that Supplier can pierce the Corporate Veil because the business at the time had no cash, it had no assets, nor inventory remaining. Since Supplier cannot get anything from Toy Shop Co, it should be able to go against its agents to recover some money back. It could obtain the $25,000 and the $30,000 from Beth.

B. What Defenses can Anne, Beth and Toy shop Co. Assert

Promoter Liability of Beth

A promoter is liable for the contracts he goes into on behalf of the corporation if he enters the contract before the corporation is established.

Here, Ann and Toy Shop Co. might be able to argue that the Supplier should go after Beth because she was acting as a promoter in the first contract, since the corporation was not fully established.

Thus, if the court finds Beth was acting as a promoter it can hold Beth liable at least for the first contract of $25,000.

Business Judgement Rule Defense by Anne and Beth

Corporate Officers are protected from liability if they can prove that they were acting on behalf of the business and in its best interests.

Here, Anne and Beth can ask to be provided liability under the business judgement rule, since Anne herself did not sign the contract with Supplier. Beth can also point out that she was acting in the best interests of the corporation since she was trying to find inventory to sell. However both of them, did not tend to the formalities of running the corporation nor did they hold any shareholder, organizational meetings.

Thus, the court would likely find that there is no protection for Anne with the business judgement rule since by failing to run the corporation she was acting against the interests of the corporation. The court would likely not shield Beth either since she also breached her duty under the business judgement rule by not keeping up with running the corporation.

Thus, this defense would fail, and supplier would be able to obtain judgement against both.

C. What is the likely outcome of suppliers claim.

Supplier would win on a contract claim because there was two breaches of contract by ToyShop Co, and simultaneously Anne and Beth as agents of Toy Shop Co. The first contract was breach when they stopped paying the supplier, the second one was also breached when they also stopped paying the supplier. By not paying the supplier, and going out of business with no cash, Supplier can successfully bring individual claims against Anne and Beth and pierce the corporate veil.

END OF EXAM