**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 (1224 words) ========

**SUPPLIER RECOVERY AGAINST ART**

Director Liability

Directors and officers in a corporation generally are not personally liable for the debts or negligence of a corporation. However, a Director or Officer can be found liable if they personally engaged in criminal activity or for any intentional torts they commit, even if in their official capacity acting on behalf of the corporation. Also, a director or officer does not have the right to appropriate or take corporation property for themselves without payment, and without approval from the Board of Directors (BOD).

Conversion

Conversion is an intentional tort that requires a person to seriously interfere with the property of another with an intent to interfere with the property, such that the intereference causes damages to the plaintiff.

Here, we know that Art began taking home some of Retail's inventory, without the BOD's permission, without paying for it. We also know that Art was not authorized to do so.. While we do not know exactly what that property consisted of, it was presumably valuable inventory of Retail's that was not Art's property, which he had no legal right to, and which he intentionally gained possession of without permission. Supplier would argue that the inventory Art took may have consisted of some of their outstanding inventory which goes towards their outstanding $10k debt owed by Retail. They would seek to establish that the property was theirs, and that Art seriously interfered with it by taking it without permission and making it his own. They would further argue that they could establish that this taking caused part of their loss, and that their damages can be sought directly from Art based on his committing an intentional tort and converting what was likely their property to his own. However, Art will argue that this property was actually owed to him by Retail based on the $50k loan that he gave to Retail. While he may or may not be entitled to repayment, it will still be difficult for Supplier to argue that the property taken by Art is directly traceable to the money owed to the Supplier. Thus, a claim of conversion will not likely succeed against Art.

**BARBARA's COA AGAINST ART**

Derivitive Suit

A shareholder may be permitted to bring a lawsuit against a corporation in the interest of shareholders if the corporation refuses to take action for itself. In order to bring a derivitive suit to compel dividends, a shareholder must first give notice to the corporation urging it to take action itself. If the corporation refuses to take action, a shareholder may bring a derivitive suit to compel dividends, provided it can show that the corporation has failed to fufill some duty owed to shareholders or to the corporation itself.

Here, we know that Barbara is a 20% shareholder, and thus she would have standing to bring a derivitive suit provided she can establish a cause of action. However, there is no indication that Barbara has taken any steps to notify the corporation of her intent to file a derivitive suit. Therefore, until she does so, she has not satisfied the procedural requirements to bring a derivitive suit. Thus, unless Barbara first provides notince to Retail and gives it the appropriate time to take action on it's owen behalf, she cannot bring a derivitive suit.

Duty of Care -- Business Judgment Rule (BJR)

A director or officer owes a corporation a duty of loyalty and a duty of reasonable care. In addition to a normal reasonable care standard, the business judgment rule (BJR) is the specific standard of care owed by directors and officers which requires that they invest and run the business as a prudent, ordinary reaosonable person would run their own business affairs.

Here, we know Barbara has a significant stake in the company and wishes to establish that Art has violated his duty of care to her and the corporation. SHe will argue that Art's inconsistent behavior and up and down performance (profits and losses) and inconsistent dividend distribution shows he did not excercise good financial judgement. She will also argue that his taking of company property is a breach of his duty. She can also successfully argue that Art and Retail failed their duty to conduct a yearly shareholders' meetings, which is their duty. Accordingly, Barbara may be able to establish a breach of the BJR for not holding regular meetings and Bob's taking of corporate property. However, she will not to allege additional facts to have a successful derivitive suit against Art, in addition to providing the proper notice

Duty of Loyalty

The duty of loyalty requires officers and directors not to self-deal, and not to usurp any corporate opportunity.

Barbara will argue that Art has violated his duty of loyalty to the company because he has elected the board of directors who are family members, and they have given him 10% of the company's profits. While this may present a conflict of interest on the board, it is not inherantly illegal or inappropriate for board members to be family members. Moreover, Barbara was presumably aware of this arrangement when she bought Retail's stock, and thus she has assumed the risk of this conflict by being aware of it and buying Retail's stock in spite of this fact. However, the absence of any disinterested directors will create problems where an issue arises regarding usurping a corporate opportunity.

Barbara will likely also argue that Art's approval of a contract to purchase 30% of inventory from a company that he owned was a conflict and breached his duty of loyalty. We have no facts to show whether the board approved this contract, or whether Art brought this conflict to the BOD's attention before entering into the contract. If Bob did not bring it to the board, Barabara may have a rightful cause of action. Moreover, Barbara can show that Retail's BOD could not give Bob the requisite ok to approve the contract, because they are not dissinterested as Bob's family members. THus, Bob likely breached his duty of loyalty to the coporation by not notifying the board of his contract with a company he has a personal stake in.

Piercing the Corporate Veil

Under the circumstances, Barbara may be able to convince the court to pierce the corporate veil. Where a closely held corporation is breaching it's duty to shareholders, a court may pierce the corporate structure to allow shareholders and others to recover from directors and officers when it is clear the corporate veil is being used as a sham to protect interests. Here, Barbara can likely establish that the BOD is inappropriately comprised of Art and his family members, and thus is inherantly conflicted and unable to make decisions in the corportions best interest. Thus, Barabara can likely pierce the corporate veil and go after Art and the Directors individually for her losses.

## ART'S RECOVERY OF LOAN FROM RETAIL

Corporation Debts

When a coporation enters bandruptcy, it's debts are distributed to non-corporation creditors first, then corporate creditors. Under normal circumstances, Art might be able to recover his debt owed after paying out assets to creditors (like Supplier) who are owed for outstanding debts.

However, given Art's loyalty issues, potentitial criminal activity, and the insolvency of Retail, it seems unlikely he will be allowed to recover any portion of his $50k loan in bankruptcy.

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Question #1 Final Word Count = 1224

======== End of Answer #4 ========