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General Partnership

A general partnership is one that is effectuated when two or more individuals decide to go into business together and share profits. No formal documents are required. Partners do not enjoy limited liability, instead they are equally share in profits and losses.

Here, before Arnold incorporated the business him and Betty were general partners because they both agreed to go into business together and act as equal owners, and there was no formal paperwork filed that indicated they were anything else.

Thus, at first Betty and Arnold established a general partnership.

Promoter

A promoter is one that contracts on behalf of the future corporation, thus the promoter is personally liable for any agreements they enter into before the corporation is officially formed.

Here, Arnold entered into an agreement with Landlord Co before Durable Paint, Inc. was official.

Thus, until the Corporation assumes the contract, Arnold is personally liable to the one-year lease he entered into with Landlord Co.h

Corporation

A corporation can be created in one of three ways, de jure, de facto or by estoppel. A de jure corporation is one that has filed official paperwork with the state, which includes the initial agents name, the number of stocks, the corporation's name, all the names and information of the incorporators and the corporations address.

Here, Arnold filed the necessary paperwork and took the necessary steps to incorporate Durable Paint, Inc.

Thus, there was a now a corporation.

Corporation Assuming Contracts

As discussed above, a promoter is liable personally for any and all contracts entered into before the corporation is official. Once the corporation exists, the corporation can assume all rights and liabilities and release the promoter from personal liability.

Here, once Durable Paint, Inc. was official Arnold and Betty voted to assume all rights and liabilities for the lease and to accept the assignment of Arnold's patent rights.

Thus, this released Arnold from any personal liability to Landlord Co for the one-year lease he entered into while a promoter and Durable Paint is now responsible.

1. Landlord Co. v. Arnold

As discussed above, Arnold would not be personally liable as a promoter to Landlord Co.

Piercing the Corporate Veil

A shareholder is generally not personally liable for the debts of the corporation, unless the corporate veil can be pierced. The corporate veil can be pierced if there is a showing that the corporation was used as an alter ego or that there was an undercapitalization of the corporation at inception.

Here, Landlord Co may argue that Durable Inc was undercapitalized at inception because the only person to put any money was Betty and she only contributed \$100,000. Further, Arnold did not contribute anything because he contributed a patent to the business. There were also no other assets available besides Betty's \$100,000, which is presumably not sufficient to start and maintain a successful paint company. Furthermore, after only six months the corporation had exhausted all of its capital which also indicates that there was not enough money to keep operations afloat.

Thus, Landlord may be successful in piercing the corporate veil and making Arnold personally liable for the one-year lease.

2. Landlord Co. v. Betty

Piercing the Corporate Veil

Same rule and discussion as above for Betty, she'd be personally liable to Landlord Co as well if they successfully argue that Durable Paint was undercapitalized at inception.

3. Betty v. Arnold

Derivative Suit

A shareholder can bring a derivative suit if they can show that a demand would be futile, that they are a shareholder and that they adequately represent the interests of the shareholders.

Here, a demand would be futile because Arnold and Betty are the only directors and officers of

the corporation. Betty is a shareholder of the corporation and she adequately represents the corporation.

Thus, Betty can bring a derivative suit for the following breaches Arnold made.

Duty of Care

A shareholder can bring a derivative suit on behalf of the corporation for the breach of duty of care. The duty of care states that a director/shareholder shall act as a reasonably prudent person.

Here, Betty will argue that Arnold breached that duty because he lied about how much his patent was worth and he should have been honest. Also, Arnold was the one in charge of

Business Judgment Rule

Arnold will try to shield his actions by arguing that it was not a breach but rather that he had never been offered more than \$50,000 but he thought his patent was worth the \$100,000.

In the end however, Betty will likely make the better argument that Arnold did in fact breach his duty of care and will be personally liable for damages to Betty.

Question #2 Final Word Count = 785

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