Can My Corporate Veil Be Pierced? The Bullet Point: Volume 3, Issue 20

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Ohio Business Opportunity Act (BOPA)

Burger Dynasty, Inc. v. Bar 145 Franchising, LLC, 6th Dist. Lucas No. L-19-1027, 2019-Ohio-4006.

This appeal involved various claims, including those under the Ohio Business Opportunity Act (BOPA) related to the purchase of a restaurant franchise and the failure to provide a "notice of cancellation in a franchise agreement."

The Bullet Point: The legislature enacted BOPA to "protect purchasers of business opportunity plans by requiring that sellers provide the purchasers with the information necessary to make an intelligent decision about the business plan being offered * * *" The purpose of the statute is to regulate the sale of business opportunity plans and to provide significant remedies "to those who have been misled by dishonest or negligent franchisors." The plan must meet several conditions, including a requirement that the goods and services are supplied by the seller or a third party seller, and the purchaser is required to make an initial payment between $500 and $100,000 to the seller or an affiliate.

Further, in order to be beholden to BOPA's requirements, the seller must make the following representations to the purchaser: (1) that the purchaser will be provided outlets, accounts, or assistance in finding those accounts for the distribution of the goods and services; (2) that the purchaser will be provided locations or assistance in finding locations for use in the distribution of goods or services; (3) that the purchaser can make a profit in excess of the initial payment; (4) that a market exists for the goods and services; and (5) that there is a buy-back agreement.

Piercing the Corporate Veil Theory

BINSARA, LLC v. Bolog, et. al., 5th Dist. Stark No. 2019CA00013, 2019-Ohio-4040.

In this appeal, the Fifth Appellate District found that the trial court did not err in considering a piercing the corporate veil theory against the defendants, despite dismissing a claim for fraud as a matter of law.

The Bullet Point: It is well-settled that shareholders, officers, and directors of a corporation are generally not liable for the debts of the corporation. This principal is not absolute. When a shareholder misuses the corporate form as a shield from liability for their own misdeeds, Ohio law will permit the piercing of the corporate veil as a rare exception to the guiding principles of limited shareholder liability. Thus, piercing the corporate veil is a judicial act that imposes personal liability on otherwise immune corporate officers, directors, or shareholders for the corporation's wrongful acts. To determine whether to pierce the corporate veil, courts consider the following factors: (1) whether control over the corporation by those to be held liable was so complete that the corporation has no separate mind, will, or existence of its own, (2) whether control over the corporation by those to be held liable was exercised in such a manner as to commit fraud, an illegal act, or a similarly unlawful act against the person seeking to disregard the corporate entity, and (3) injury or unjust loss resulted to the plaintiff from such control and wrong.

Ohio's Savings Statute

U.S. Bank Trust N.A. v. Collins, 8th Dist. Cuyahoga No. 108344, 2019-Ohio-4067.

In this appeal, the Eighth Appellate District found that a lawsuit that might have been barred by the statute of limitations was saved from dismissal by Ohio's savings statute.

The Bullet Point: Ohio Savings Statute, R.C. 2305.19, affords a plaintiff a limited period of time to refile a dismissed claim that would otherwise be time barred. Thus, "[i]n certain instances, [R.C. 2305.19] operates to save timely filed actions by permitting a party to refile its complaint or file a new action within one year of a dismissal otherwise than on the merits."

Court Compelled Forensic Imaging

Allied Debt Collection of Virginia, LLC, v. Nautica Entertainment, LLC, 8th Dist. Cuyahoga No. 107678, 2019-Ohio-4055.

In this appeal, the Eighth Appellate District found that while the trial court's decision to order a "mirror image" of a computer belonging to an employee of the defendant was proper, it found that the trial court failed to provide adequate safeguards to protect the confidentiality of information on the computer to be imaged.

The Bullet Point: A forensic image, also known as a "mirror image," will "'replicate bit for bit, sector for sector'" all allocated and unallocated space on a computer's hard drive, including any embedded, residual, and deleted data. Courts are generally reluctant to compel forensic imaging "largely due to the risk that the imaging will improperly expose privileged and confidential material contained on the hard drive." To determine whether forensic imaging is warranted, as opposed to standard discovery procedures, the trial court must (1) weigh the parties' interest in obtaining discovery against privacy concerns; and (2) institute a protective protocol to ensure that forensic imaging is not unduly intrusive.

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