Business Law Update:

Piercing the Veil of Iowa Entities and Related Issues

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General Rule of Limited Liability

For Corporate Shareholders:

§ 490.622(2): "Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation … ."

For LLC Members and Managers:

§ 489.304(1): "For debts, obligations, or other liabilities of a limited liability company, whether arising in contract, tort, or otherwise, all of the following apply: (a) They are solely the debts, obligations, or other liabilities of the company. They do not become the debts, obligations, or other liabilities of a member or manager solely by reason of the member acting as a member or the manager acting as a manager."

For Limited Partners / LLP Partners:

Parallel protection to the LLC Act from §§ 488.303 and 486A.306(3).

General Rule of Limited Liability

For Directors, Officers, Employees or Other Corporate Agents:

No statutory limited liability rule. ***But a corporation is a separate legal "person," so no reason directors, officers, employees or other agents should be liable for corporate acts.***

For LLC / LP / LLP Employees or Other Agents:

No statutory limited liability rule. ***But these entities are legal "persons," so no reason employees or agents should be liable for entity acts.***

Cf. § 486A.306: Partners (separate persons from the partnership) ARE vicariously liable for partnership obligations by statutory fiat.

"[A] corporate officer is ordinarily not liable in damages for a breach of contract by the corporation." ***Boyssuyt v. Osage Farmers Nat'l Bank,*** **360 N.W.2d 769, 778 (Iowa 1985).**

General Rule of Limited Liability--Exceptions

Exceptions from Agency Law where corporate directors, officers, employees or other agents *might* be exposed to personal liability when working for a corporation or other business entity?

Tortious Conduct Exception: Restatement (3d) of Agency § 7.01.

An agent is subject to liability to a third party harmed by the agent's tortious conduct. Unless an applicable statute provides otherwise, an actor remains subject to liability although the actor acts as an agent or an employee, with actual or apparent authority, or within the scope of employment.

See also § 490.622(2)("… [A] shareholder … may become personally liable by reason of his own acts or conduct.")

See also § 489.304(1)("[LLC debts, obligations or other liabilities] do not become the debts, obligations, or other liabilities of a member or manager *solely by reason of* the member acting as a member or manager acting as a manager.")

General Rule of Limited Liability--Exceptions

Tortious Conduct Exception: Restatement (3d) of Agency § 7.01.

Example: *Jasper v. H. Nizam, Inc.*, 764 N.W.2d 751 (Iowa 2009) (corporate officer who wrongfully discharged employee personally liable for the tort of wrongful discharge).

Example: *Estate of Countryman v. Farmers Co-op Assn.*, 679 N.W.2d 598 (Iowa 2004) (LLC member/manager could be personally liable for participating in company's safety decisions relating to odorization of propane that the company supplied to customers).

General Rule of Limited Liability--Exceptions

Failure to Identify Principal or Failure to Disclose Agency status in transactions: Restatement (3d) of Agency §§ 6.02, 6.03.

§ 6.02 *When an agent* acting with actual or apparent authority *makes a contract on behalf of an unidentified principal*, (1) the principal and the third party are parties to the contract; and (2) *the agent is a party to the contract unless the agent and the third party agree otherwise*.

§ 6.03 *When an agent* acting with actual authority *makes a contract on behalf of an undisclosed principal*, (1) unless excluded by the contract, the principal is a party to the contract; [and] (2*) the agent and the third party are parties to the contract … .*

Example: *Builders Kitchen and Supply Co. v. Moyer*, 776 N.W.2d 112 (Iowa Ct. App. 2009) (corporate officer personally liable on contract for purchase of cabinets not only because of guaranty provision in contract, *but also because officer failed to indicate corporation was his principal when signing the contract*).

General Rule of Limited Liability--Exceptions

Breach of Implied Warranty of Authority to act for corporation: Restatement (3d) of Agency § 6.10.

A person who purports to make a contract … with a third party on behalf of another person … gives an implied warranty of authority to the third party and is subject to liability to the third party for damages for loss caused by breach of that warranty … unless … (2) the person who purports to make the contract, representation, or conveyance gives notice to the third party that no warranty of authority is given; or (3) the third party knows that the person … acts without actual authority.

Example: *Ritz v. MyMor Homes, Inc*., 213 N.W.2d 470 (Iowa 1973) (where it was not clear whether agent had authority to promise that principal would make home repairs, trial court should have submitted the agent's implied warranty of authority as an alternative liability theory against agent).

The "Veil-Piercing" Exception: *What is the Iowa "test"?*

Is the corporation a "mere shell," "intermediary," "alter ego" or "instrumentality" of the shareholders?

Is the corporation a "sham"?

Iowa courts have used all these metaphors, but they are not particularly helpful.

The "Veil-Piercing" Exception: *What is the Iowa "test"?*

Other tests:

A corporate entity is the alter ego of a person if (1) the person influences and governs the entity; (2) a unity of interest and ownership exists such that the corporate entity and the person cannot be separated; and (3) giving legal effect to the fictional separation between the corporate entity and the person would 'sanction a fraud or promote injustice.' *HOK Sport, Inc. v. FC Des Moines, LC*, 495 F.3d 927,941 (8th Cir. 2007).

The "Veil-Piercing" Exception: *What is the Iowa "test"?*

Other tests:

"The corporate veil may be pierced under exceptional circumstances, for example, where the corporation is a mere shell, serving no legitimate business purpose, and used primarily as an intermediary to perpetuate fraud or promote injustice." *Briggs Transportation v. Starr Sales Co.*, 262 N.W.2d 805, 809 (Iowa 1978).

The "Veil-Piercing" Exception: *What is the Iowa "test"?*

Most commonly applied test: The *Briggs* factors. *Briggs Transportation v. Starr Sales Co.*, 262 N.W.2d 805, 809 (Iowa 1978):

(1) Was the corporation undercapitalized?
(2) Did the corporate participants follow corporate formalities?
(3) Did the corporation keep separate books?
(4) Were corporate finances kept separate from individual finances, or did the corporation pay individual obligations?
(5) Was the corporation used to promote fraud or illegality?
(6) Was the corporation a mere sham?

Source of *Briggs* factors?

***Lakota Girl Scout Council, Inc. v. Havey Fund-Raising Management, Inc.*, 519 F.2d 634, 638 (8th Cir. 1975) (applying these factors to pierce corporation's veil in order to assert personal jurisdiction over its sole shareholder).**

The "Veil-Piercing" Exception: *Iowa "test" applied.*

***Briggs Transportation v. Starr Sales Co.*, 262 N.W.2d 805, 809 (Iowa 1978)**

Facts: A family-owned corporation purchased merchandise from plaintiff on credit. In the process, one or more of the shareholders falsified the corporation's credit history, resold the delivered merchandise, and misappropriated the proceeds without payment to plaintiff.

These events, together with evidence that the corporation had never been properly capitalized and that no formalities had ever been observed, persuaded the Iowa Supreme Court that piercing was a proper remedy.

Iowa Pattern Jury Instructions 3300.1 and 3300.2:

3300.1 Piercing The Corporate Veil - Essentials For Recovery. The plaintiff must prove all of the following propositions:

1. The defendant is a shareholder of (name of corporation).
2. (Name of corporation) is indebted to the plaintiff.
3. *The defendant has abused the corporate privilege.*
4. The amount owed by the corporation to the plaintiff.

If the plaintiff has failed to prove any of these propositions, the plaintiff is not entitled to damages. If the plaintiff has proved all of these propositions, the plaintiff is entitled to damages in some amount.

(emphasis supplied)

3300.2 Piercing The Corporate Veil - Definition. Corporate privilege is the right of a shareholder of a corporation to avoid personal liability for the debts of the corporation. A shareholder may be held personally liable for corporate debts only in exceptional circumstances in which the shareholder abuses the privilege. *An abuse may be found when the corporation is a mere shell, or serves no legitimate business purpose, or is used by the shareholder primarily as a means to commit fraud or promote injustice. Factors that tend to establish abuse of the corporate privilege include the following*:

1. The corporation is undercapitalized.
2. The corporation lacks separate books.
3. The corporation's finances are not kept separate from individual finances or individual obligations are paid by the corporation.
4. The corporation is used primarily to promote fraud or illegality.
5. The corporate formalities are not followed.
6. The corporation is a mere sham.

(emphasis supplied)

Undercapitalization

"It is coming to be recognized as the policy of the law that shareholders should in good faith put at the risk of the business unencumbered capital reasonably adequate for its prospective liabilities. If capital is illusory or trifling compared with the business to be done and the risks of loss, this is a ground for denying the separate entity privilege." *Briggs*, 262 N.W.2d at 810, quoting Ballantine on Corporations.

Undercapitalization

Examples where Iowa courts have found "undercapitalization" present suggest piercing results when the corporation is *GROSSLY* undercapitalized. E.g.:

***Briggs*, 262 N.W.2d at 810 (shareholder testimony that "[t]here wasn't any money paid in," "[t]here wasn't any assets.").**

***C. Mac Chambers v. Iowa Tae Kwon Do Academy, Inc.*, 412 N.W.2d 593, 598 (Iowa 1987)(sole shareholder "did [not] offer any consideration for his 1,000 shares of stock … and by his own admission … made no capital contribution").**

***HOK Sport, Inc. v. FC Des Moines, L.C.*, 495 F.3d 927, 941 (8th Cir. 2007) ("By being in the business of constructing a stadium, TSF needed to be sufficiently capitalized so TSF could pay its debts even if the stadium project failed.").**

Undercapitalization

Examples where Iowa courts have found "undercapitalization" *not present*:

***Beck v. Equine Estates Development Co.*, 537 N.W.2d 798 (Iowa Ct. App. 1995) ("There is no evidence showing Equine was continually undercapitalized. Its misfortune was inseparably linked to Rosenbergers' financial collapse.").**

Undercapitalization

Other issues relating to "undercapitalization:" Does liability insurance count?

See *Moyle v. Elliott Aviation, Inc.*, 715 N.W.2d 767 (Iowa Ct. App. 2006) (Affirming trial court decision granting summary judgment on claims seeking to pierce the veil of repair company subsidiary of charter airline and noting that, while repair company's $40 million insurance policy did not prove proper capitalization, the policy "helped establish that no exceptional circumstances justified piercing").

Undercapitalization

Is "undercapitalization" alone sufficient to pierce the veil?

The Iowa cases do not address this point, but if one looks to other states, it is hard to find decisions piercing the veil *solely* on the basis of inadequate capital.

One recent study found courts typically pierced for lack of capital only where shareholders engaged in some sort of *misrepresentation* about the amount of capital. See Macey & Mitts, *Finding Order in the Morass: The Three Real Justifications for Piercing the Corporate Veil*, 100 Cornell L. Rev. 99 (2014).

Undercapitalization

Other issues relating to "undercapitalization:" When do we measure capitalization for purposes of this issue—only at the inception of the venture or on an ongoing basis?

The Iowa cases do not address this point, but there is support for both views in cases from other states and in academic commentary. Some commentators argue strongly that courts should assess the adequacy of *initial capital* only.

If the corporation is initially adequately capitalized but becomes undercapitalized thereafter, the reasons for loss of capital are presumably relevant—e.g.,

bad business experience
vs.
intentional withdrawals through salary to owners, dividends, etc.

Undercapitalization and Assumption of the Risk

If the plaintiff who seeks to pierce the veil voluntarily dealt with a corporation, is undercapitalization relevant—or can it be said that plaintiff assumed the risk of inadequate capital?

Undercapitalization and Assumption of the Risk

Consider the following quote from Judge Christopher McDonald's dissenting opinion in *Keith Smith Co. v. Bushman*, 873 N.W.2d 776 (Iowa Ct. App. 2015), a case affirming a trial court's decision to pierce the veil of an LLC and impose liability on the LLC's members:

I would hold personal liability should not be imposed on members of an LLC for the LLC's obligations on the basis of inadequate capitalization of the LLC where the judgment creditor's claim arises in contract, where the judgment creditor had the opportunity to obtain financial statements and other credit information prior to entering the contract, where the judgment creditor had the opportunity to price and allocate the risk of loss by requesting personal guaranties or other security, and where the judgment creditor failed to do so.

Assumption of risk is NOT a *Briggs* factor, but there is support for Judge McDonald's view in other jurisdictions! No Iowa Supreme Court decision on this issue.

Corporate Formalities

Clearly a piercing factor, but less clear *why* it should be a factor.

Many academic commentators have questioned the relevance of formalities, especially where the failure to observe formalities did not confuse the plaintiff—i.e., plaintiff *knew* it was dealing with a limited liability entity.

And what relevance do formalities have to an involuntary corporate creditor, like a tort victim?

One possible answer: Did the failure to follow formalities make it impossible for plaintiff to find / trace corporate assets?

Corporate Formalities

Formalities are clearly a factor cited by Iowa cases. E.g.:

***Van Oort Construction Co. v. Nuckoll's Concrete Service, Inc.*, 599 N.W.2d 684 (Iowa 1999) ("No stock was ever issued. No tax returns were ever filed. The corporation did not collect or pay any employment taxes or social security. Randall [the sole shareholder] did not observe corporate formalities… . We conclude that substantial evidence supports the trial court's finding that the corporation was a sham … .")**

***Murray v. Conrad*, 346 N.W.2d 814 (Iowa 1984) ("The factfinder could find C.D.I. [the corporation] was a mere shell established by Conrad to hold his distributorship license. The corporation was not capitalized, and no stock was ever issued. No corporate books were kept. Corporate funds were commingled with funds of Conrad individually and with funds of other Conrad corporations.")**

Corporate Formalities

There is some indication in decisions from the Iowa Court of Appeals that where the only basis for piercing is shareholders' failure to strictly observe corporate formalities, the corporate veil should not be pierced if that failure did not in any way mislead third party creditors.

I.e., *Despite the failure to observe formalities, the creditor knew it was dealing with a corporate debtor, not an individual debtor.*

E.g., *Ross v. Playle*, 505 N.W.2d 515 (Iowa Ct. App. 1993)

E.g., *Tannahill v. Aunspach*, 538 N.W.2d 871 (Iowa Ct. App. 1995)

Financial Separation of Shareholders and the Corporation: Separate Books and Separate Finances

The *Briggs* factors also include whether shareholders kept personal and corporate finances separate, and maintained appropriate records to that effect.

Commingling of finances could obviously prejudice creditors—e.g., by misleading creditors about the extent of corporate assets or by making it difficult to trace/find corporate property.

E.g., *Murray v. Conrad*, 346 N.W.2d 814 (Iowa 1984) ("Corporate funds were commingled with funds of Conrad individually and with funds of other Conrad corporations.")

E.g., *HOK Sport, Inc. v. FC Des Moines, L.C.*, 495 F.3d 927, 941 (8th Cir. 2007) (court cited commingling of finances and failure to follow formalities as justifications for piercing the veil)

Corporation Used to Promote "Fraud or Illegality" or Corporation is a "Mere Sham"

Courts are quick to disregard the corporate entity when the shareholders have used a corporation to accomplish an end that is in some respect fraudulent, illegal, or unfairly prejudicial to the rights of creditors. In these cases, the courts often label the resulting corporation as a "mere sham" or "instrumentality" of the shareholders and disregard its separate existence.

Corporation Used to Promote "Fraud or Illegality" or Corporation is a "Mere Sham"

E.g., *Briggs Transportation v. Starr Sales Co*., 262 N.W.2d 805, 809 (Iowa 1978). When seller of goods investigated corporate credit, shareholders misrepresented corporate finances. When the goods were delivered to the corporation, shareholders misappropriated and sold them, then kept the proceeds. Court had no trouble concluding shareholders had used the corporation to commit fraud.

E.g., *Van Oort Construction Co. v. Nuckoll's Concrete Service, Inc*., 599 N.W.2d 684 (Iowa 1999) (individual attempted to circumvent non-compete clause by forming a corporation to engage in competition; court labelled the resulting corporation a "sham")

E.g., *Benson v. Richardson*, 537 N.W.2d 748 (Iowa 1995) (judgment debtor physician hid personal earnings from creditors by transferring the earnings to a newly-established professional corporation owned 1% by physician and 99% by his wife)

Limited Liability Company Piercing

Piercing doctrine DOES apply to Iowa LLCs.

See *Cemen Tech, Inc. v. Three D Industries, LLC*, 753 N.W.2d 1 (Iowa 2008) (quoting the *Briggs* factors as the appropriate test).

See also

***Keith Smith Co. v. Bushman*, 873 N.W.2d 776 (Iowa Ct. App. 2015) (applying *Briggs* piercing factors and affirming lower court's decision to pierce)**

***CSS, Inc. v. K&M Enterprises, LLC*, 829 N.W.2d 193 (Iowa Ct. App. 2013) (applying *Briggs* piercing factors and affirming lower court's refusal to pierce)**

Limited Liability Company Piercing and Formalities

But what about Formalities—one of the *Briggs* factors? Iowa Code Section 489.304(2) says:

[t]he failure of a limited liability company to observe any particular formalities relating to the exercise of its powers or management of its activities is not a ground for imposing liability on the members or managers for the debts, obligations, or other liabilities of the company.

Limited Liability Company Piercing and Formalities

***Northeast Iowa Co-op v. Lindaman*, 843 N.W.2d 477 (Iowa Ct. App. 2014), expressly acknowledges that Iowa Code Section 489.304(2) prohibits courts from considering a limited liability company's observance of formalities as a piercing factor.**

The court affirmed the district court's refusal to pierce the veil of a two-member limited liability company that had been engaged in farming operations. The principal *Briggs* factor on which there was evidence supporting piercing was the limited liability company's failure to observe management formalities: the company had held no meetings and had not preserved minutes.

The court held that such evidence could not properly support a piercing determination: "Because the statute specifically provides the failure to 'observe any particular formalities is not a ground for imposing liability on the members' for company debts, we are not persuaded [that piercing is appropriate]."

Other Piercing Issues

Choice of Law: If an Iowa court tries a piercing case involving an entity organized in another jurisdiction, does Iowa piercing law apply or should the court instead apply the piercing law of the entity's home state?

No Iowa state cases.

But see *Tyson Fresh Meats, Inc. v. Lauer Ltd., LLC*, 918 F.Supp.2d 835, 849-50 (N.D. Iowa 2013) (Iowa federal court used Nebrasksa law to analyze piercing claims brought against a Nebraska LLC that allegedly breached a contract to deliver hogs in Iowa).

Other Piercing Issues: "Reverse Piercing" to Reach Corporate Assets

Can a creditor of a shareholder pierce the corporate veil to treat assets of the corporation as if they belong to the shareholder?

Rarely necessary, but the Iowa courts have done this.

See, e.g., *Benson v. Richardson*, 537 N.W.2d 748 (Iowa 1995).

Judgment debtor physician and his wife established a professional corporation. Physician owned 1 share; wife owned 99 shares. The physician thereafter transferred substantially all of his earnings to the corporation.

The evidence strongly suggested that the corporation's sole purpose was to hide the physician's earnings from his judgment creditors, and thus, it effectively operated as a fraudulent conveyance on those creditors. The court pierced the corporate veil and directed entry of judgment against the corporation for the full amount of the physician's obligations.

Other Piercing Issues: "Reverse Piercing" at Shareholders' Request

Can a shareholder sue to pierce the corporate veil to avoid separate entity status where it would be to the shareholder's benefit to do this?

Not a sympathetic case, and to date the Iowa courts have refused.

See, e.g., *Hawkeye Bank & Trust v. Baugh*, 463 N.W.2d 22 (Iowa 1990) (refusing shareholder's request to disregard corporate entity so that he could defend corporate lawsuit pro se).

See also *Crees v. Chiles*, 437 N.W.2d 249 (Iowa Ct. App. 1998) (Injured worker sued a co-employee for gross negligence, as permitted under the worker's compensation laws, but co-employee, who was also a shareholder, director, and officer of the injured worker's corporate employer, claimed immunity under the worker's compensation statute on the theory that he was the corporate employer's "alter ego." The court rejected the claim, concluding that it was inappropriate to expand the statutory immunity scheme authorized by the legislature).

Is this a piercing issue or interpretation of the other law/rule?

Other Piercing Issues: Piercing to get Jurisdiction Over Shareholders

Courts sometimes pierce to obtain personal jurisdiction over the corporation's shareholders.

***Lakota Girl Scout Council, Inc. v. Havey Fund-Raising Management, Inc*., 519 F.2d 634, 638 (8th Cir. 1975) (applying these factors to pierce corporation's veil in order to assert personal jurisdiction over its sole shareholder).**

See also Acquadrill, Inc. v. Environmental Compliance Consulting Services, Inc., 558 N.W.2d 391, 394-95 (Iowa 1997) (applying piercing to overcome the "fiduciary shield" defense to personal jurisdiction over nonresident corporate agents).

Who Should Decide Iowa Piercing Cases: Judge or Jury?

Who decides whether the corporate veil should be pierced—the judge or the jury?

When piercing cases are tried in federal court, the question is whether the veil piercing remedy triggers the Seventh Amendment's guaranty that civil litigants in federal court are entitled to a jury trial where the amount in controversy exceeds $20.

Supreme Court precedent suggests the issue should be resolved by determining whether piercing is a "legal" or "equitable" remedy. Tests look at "historical practice" test and also the nature of the remedy that plaintiff seeks—e.g., equitable relief or damages.

Issue: If plaintiff invokes piercing to recover damages, and if piercing is based on the presence or absence of particular "facts," can we fairly characterize piercing as an "equitable" remedy?

The Circuits are divided—as yet no 8th Circuit decision. See Koosed et al., *Disregarding the Corporate Form: Why Judges, Not Juries, Should Decide the Quiddits and Quillets of Veil Piercing*, 13 N.Y.U. J.L. & Bus. 95, 114-128 (2016).

Who Should Decide Iowa Piercing Cases: Judge or Jury?

Who decides whether the corporate veil should be pierced—the judge or the jury?

In state court, the question is whether parallel state constitutional jury trial rights apply. E.g., Iowa Constitution Article 1, Section 9: "The right of trial by jury shall remain inviolate … ."

Iowa state courts have held that the question is one of fact for the jury. See, e.g., Team Central, Inc. v. Teamco, Inc., 271 N.W.2d 914 (Iowa 1978).

But see Minger Construction, Inc. v. Clark Farms, Ltd., 873 N.W.2d 301 (Iowa Ct. App. 2015) (Judge McDonald's dissenting opinion arguing that judges should decide piercing cases).

Roughly 40 states reserve piercing for the court.

Iowa LLCs as Asset Protection Devices for Company Members?

The Iowa Code does not provide for self-settled Asset Protection Trusts, but the laws of a number of states do. These trusts are designed to put the settlor's assets beyond the reach of creditors while allowing the settlor to enjoy the use of the assets. See generally Halpern, *Domestic Asset Protection Trusts: What is Your State of Asset Protection*, 7 Fla. St. U. Bus. Rev. 139 (2008).

Can an Iowa LLC serve the same purpose?

Assume Physician (not insolvent) establishes an Iowa LLC and is the sole member. Physician transfers all his/her non-exempt assets to the LLC.

A fraudulent transfer?

--No, assuming Physician (who is solvent) is not attempting to hinder, delay or defraud creditors when making the transfer.

Years later Plaintiff (JC) successfully sues Physician for malpractice and wins a large judgment. Physician's non-exempt assets are still in the LLC.

Can JC reach Physician's assets in the LLC?

Rights of a Creditor of an LLC Member

Can JC reach Physician's assets in the LLC?

If the LLC were a corporation, JC could have the sheriff levy on Physician's shares of stock and sell the shares in a judicial sale. JC (or highest bidder at the sale) would own the stock and thereby control Physician's corporation and thus Physician's assets.

But the LLC is not a corporation!

Rights of a Creditor of an LLC Member: The Charging Order Remedy

Iowa Code Section 489.503(1):

"On application by a judgment creditor of a member or transferee, a court may enter a *charging order* against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment."

How does the charging order lien benefit JC?

Iowa Code Section 489.503(1):

"A charging order constitutes a lien on a judgment debtor's transferable interest and requires the [LLC] to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor."

Rights of a Creditor of an LLC Member: The Charging Order Remedy

Note that the charging order is a judicial lien on a member's "*transferable interest*" in the LLC—"*the member's rights to receive distributions from the company in accordance with the operating agreement.*" I.e., the "transferable interest" to which the lien attaches is the member's financial rights in the LLC, not the member's right to control the LLC.

Do you see the problem?

The Physician is still the "member" of his/her LLC and will thus control the operating agreement (and the decision whether the company pays out distributions). If Physician chooses to leave his/her assets in the company, JC will receive nothing—despite the charging order!

Rights of a Creditor of an LLC Member: The Charging Order Remedy

Will foreclosing the charging order help JC?

Iowa Code Section 489.503(3): "Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale only obtains the transferable interest, does not thereby become a member, and is subject to Section 489.502."

The purchaser at the sale (likely JC) will become a "transferee" of the transferable interest, but will still not be a member of the LLC so Judgment Debtor Physician's non-exempt assets will still be in the LLC unless he/she decides otherwise!

Possible Remedies for JC: Statutory Modifications to the Charging Order Remedy

Some state laws (but not Iowa's) explicitly allow the purchaser of a charging order at a foreclosure sale to obtain the full membership interest rights, not just the economic interest, when the charging order is against a debtor who is the sole member of an LLC. *E*.g., Fla. Stat. Ann. § 608.426(6)(a)–(c) (West 2015); Utah Code Ann. § 48-2C-1103(2)(d) (West 2015).

If Iowa law provided this remedy, what would you advise Physician to do when establishing the LLC?

Possible Remedies for JC: Reverse Piercing?

No Iowa cases yet, but *Benson v. Richardson* (Iowa corporate case discussed above) suggests reverse piercing may be appropriate to allow JC to reach the LLC's (the Physician Judgment Debtor's) assets to satisfy his/her debts!

Other jurisdictions have allowed this remedy in the LLC context. See, e.g., Litchfield Asset Management Corp. v. Howell, 799 A.2d 298 (Conn. App. Ct. 2002).

See generally Bishop, Reverse Piercing: A Single Member LLC Paradox, 54 S.D. L. Rev. 199 (2009).

Possible Remedies for JC: Seek Dissolution of LLC on Grounds of Oppression?

No Iowa cases yet, but the Iowa LLC Act includes a non-uniform provision that authorizes both members AND "transferees" of an LLC member's transferable interest to seek dissolution of the LLC on grounds of "oppression." Could JC seek dissolution on this ground?

See Iowa Code Section 489.701(1)(e):

"A limited liability company is dissolved, and its activities must be wound up, upon the occurrence of any of the following: …

(e). On application by a member or transferee, the entry by a district court of an order dissolving the company on the grounds that the managers or those members in control of the company have done any of the following: …

(2) Have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant."