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Corporate liability: An intro. to causes of action - by Michael Brangwynne

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This is the second article in a series on the circumstances that can give rise to a civil lawsuit. The first article in the series can be found on Fletcher Tilton's website under ARTICLES and on the NEREJ website.

Corporate Liability Generally

Before diving into a discussion of the most common causes of action - which are the combination of facts sufficient to justify a right to sue to obtain money, property, or the enforcement of a right against another party - it seems appropriate first to discuss corporate liability generally.

Many owners of small and large business will be familiar with the fact that a corporation is a separate legal entity which affords protection against liability to the owners of the corporation, who are also known as shareholders. A corporation's liability is typically limited to assets that are held in the name of the corporation. Put another way, if the corporation is sued and is found liable in an amount that exceeds the total assets of the corporation, the shareholders' personal assets usually will not be at risk. This allows individuals to invest a certain amount of capital into a business, and rest assured that they only stand to lose, at most, only the amount that they have invested. The shareholders usually cannot be held personally responsible for the debts or liabilities of the corporation.

Respondeat Superior

You may be wondering how a corporation would become liable to anyone in the first place. What actions can we attribute to the corporation itself? Unlike with individuals, we do not see corporations walking down the street each day.

The answer is that a corporation can only act through its agents - such as its officers, directors, and employees. Under the legal doctrine of respondeat superior, a corporation can be held vicariously liable for the actions of its employees while they are employed and acting within the scope of their

employment. That is not to say that individual employees cannot be held liable for their own unlawful conduct while acting on behalf of their employer - they can. Nevertheless, our courts long ago decided that both the employer and employees should be liable if the employees' conduct was in furtherance of their employer's interests.

By Way of Example

Suppose Builder Corp. is 100% owned by John Builder, who is also the president of the corporation. Don Driver is an employee and operates heavy machinery for Builder Corp. Business has been good, and in addition to having a flush corporate bank account and a fleet of construction vehicles, Mr. Builder has recently purchased a personal beach house with distributions from the corporation.

One day, while operating a front-end loader at a Builder Corp. job site, Driver forgets to set the brakes properly before taking his lunch break. The front-end loader, which is parked on an incline, rolls through the neighborhood, destroying several expensive houses and injuring a bystander.

In the inevitable lawsuits that follow, the injured bystander and homeowners would have a very strong claim for negligence against not only Driver, but also against Builder Corp. Because Driver was acting within the scope of his employment with Builder Corp. in operating the front-end loader, the corporation will be held vicariously liable for his actions.

The silver lining for Mr. Builder is that only the corporate assets of Builder Corp. should be at stake in the litigation. If the plaintiffs obtain a judgment that far exceeds Builder Corp.'s ability to pay, the plaintiffs could seize Builder Corp.'s vehicles and corporate bank accounts to satisfy the judgment, but they will not be able to reach Mr. Builder's personal assets, such as his new beach home.

As a practical matter, while this example does demonstrate the benefits of a corporation's limited liability, it also demonstrates the importance of corporate liability insurance. It may be small consolation to Mr. Builder that he can keep his beach house, when a single employee's careless actions have bankrupted his business. We will pick up on the topic of liability insurance in the next installment of this series.

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