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Client Bulletin

Volume XXXIII, No. 5 **December 31, 2016**

"Piercing the Corporate Veil" of a Limited Liability Company

In our October Client Bulletin, we reported on an appellate court case in which the court upheld "piercing the corporate veil" to hold a shareholder personally liable for personal injuries and medical expenses resulting from gross negligence by the corporation's sole shareholder and agents, the court going through the "piercing the corporate veil" elements of the Ohio Supreme Court's *Belvedere* case and specifically pointing out the corporation's failure to conduct meetings and maintain corporate records.

In an opinion issued in November, the Seventh District Court of Appeals, in a 60-page decision in *Premier Therapy, L.L.C. v. Childs*, 2016-Ohio-7934, upheld a jury's verdict "piercing the corporate veil" of a limited liability company (LLC) and holding someone who was not an official member of the LLC liable for specific loan obligations of the LLC. The Court of Appeals overruled assignments of error that (a) the "piercing the corporate veil" doctrine was not applicable to LLCs and (b) the persons who were held liable for the LLC's obligation could not be held liable as they were not "registered" members of the LLC.

In holding that the "corporate veil" of the LLC could be "pierced," the Court cited to several decisions of other appellate courts that had applied the corporate veil piercing doctrine to LLCs and relied on Ohio Rev. Code § 1705.48(D)'s provision: "Nothing in this chapter affects any personal liability of any member, any manager, or any officer of a limited liability company for the member's, manager's, or officer's own actions or omissions."

Although the individuals were not "registered" members, the Court found that the non-members could be held personally liable for the LLC's loan obligation based on the jury's factual findings that (a) the actual members of the LLC had ceased to control the LLC, (b) the non-members had taken actual control of the LLC, (c) the non-members had used LLC assets for their personal benefit, and (d) the non-members had transferred the LLC's primary asset (a nursing home) out of the LLC.

Is Your Power of Attorney Durable?

A durable power of attorney is a power of attorney that continues in full force and effect even if the person granting the power of attorney becomes incompetent/lacks capacity, unless and until a court declares the person incompetent and appoints a guardian. Since a power of attorney executed by someone who is incompetent/ lacks capacity is not valid and of no legal force and effect, it is generally best that a power of attorney be durable. Notwithstanding such, Ohio law, until March 22, 2012, provided that a power of attorney was not durable unless it expressly provided that it was durable. Effective March 22, 2012, Ohio adopted the Uniform Power of Attorney Act which, among other things, modified existing Ohio law by providing that a power of attorney created under the Uniform Power of Attorney Act is durable "unless it expressly provides that it is terminated by the incapacity of the principle." Thus, if a power of attorney does not address whether or not it is durable, it is not durable if dated March 21, 2012 or earlier, but is durable if it is dated March 22, 2012 or later.

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Congratulations

In a recent supplement to Business First, there was printed a list of top homebuilders ranked by 2015 gross sales of owner-occupied units in central Ohio. (If a homebuilder did not respond and provide its 2015 gross sales, it was not included.) In addition to listing 2015 gross sales, the listing also disclosed the number of home sales closed in 2015, the number of homes started in 2015, and the price range of homes built, among other things. 3 Pillar Homes, LLC was ranked #8 and Kevin Knight & Co. was ranked #12. 3 Pillar had 36 homes closed, 28 homes started, and a price range of $350,000 to $1,000,000. Kevin Knight & Co. had five homes closed, one home started and a price range of $1,200,000 to $2,600,000 for the five homes closed.

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Westlaw™ Headnote of the Day-Dog's Owner Not Liable for Dog Knocking Housekeeper out of Hammock

A dog owner lacked knowledge of any vicious propensity of the dog to cause people to fall out of a hammock by jumping in and out of it, and thus the owner could not be held strictly liable for injury sustained by the owner's housekeeper in a fall that occurred when the dog jumped into and almost immediately out of a hammock on which the housekeeper was sitting. The dog had previously jumped in and out of the hammock while the owner was in it, but this had never before caused the owner or anyone else to fall from the hammock. *Clark v. Heaps*, 995 N.Y.S.2d 356 (N.Y.A.D. 3 Dept., 2014).

Notice

This bulletin provides general information and is not legal advice. Please contact us if you need legal advice.

If you have friends or associates who you think would enjoy receiving a copy of this Client Bulletin, please feel free to forward it on. Thank you.