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Legal News for Clients

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CORPORATE OFFICERS SHOULD BE CAREFUL IN EXECUTING DOCUMENTS ON BEHALF OF THE CORPORATE ENTITY

One of the primary reasons that an individual incorporates a business is because corporations exist as separate legal entities from the individuals that form them. As a result, when one forms a corporation, there is typically a liability shield (even though it is not ironclad) between an individual's personal assets and the business's assets. In operating a business through a corporate entity, however, care must be taken to maintain this liability shield to avoid personal liability on corporate debts. Slip-ups often occur when corporate officers execute documents on behalf of the corporate entity, rather than in their individual or personal capacity.

In *Babul v. Golden Fuel, Inc.*, 990 So.2d 680 (Fla. 2d DCA 2008), appellants Sadruddin Babul and Rahmat Barkat (collectively referred to as the "Appellants") executed a contract with Golden Fuel, Inc. ("Golden Fuel") for the replacement of two underground fuel tanks at "PetroMart Convenience Store." In January 2007, Golden Fuel sued Appellants, individually, for breach of the contract. Golden Fuel claimed that it had performed under the contract and that the Appellants had breached the contract by failing to pay the balance due. Appellants filed a motion to dismiss the lawsuit arguing that Golden

Fuel should not have sued them but should have sued their corporation, Muyyad, Inc. of Florida ("Muyyad, Inc.") instead. Appellants claimed that they had signed the contract with Golden Fuel on behalf of Muyyad, Inc., which owned the business but was not listed on the contract. They alleged Golden Fuel was aware that they were acting as corporate officers on behalf of Muyyad, Inc.

Golden Fuel filed a motion for summary judgment, which argued that it was entitled to a judgment against Appellants prior to trial. The motion asserted that it was undisputed that Golden had performed the services required under the contract, but had not been paid. In support of its motion, Golden Fuel filed an affidavit of its Vice President, in which Golden denied having any knowledge that Appellants had signed the contract as agents for another entity. In response, Appellants filed their own affidavits stating that they had only signed the contract on behalf of Muyyad, Inc. and that Golden Fuel was fully aware of that fact. Appellants further stated that they would never have signed the contract if they had known that they would be personally liable for the amounts due under the contract. The trial court granted Golden Fuel's motion for summary judgment, and Appellants filed

their appeal.

On appeal, the Second District Court of Appeal reversed the trial court's ruling. The Court found that the affidavits of Appellants created a genuine disputed issue of material fact. The contract was unclear in not specifying who owned the Petro Mart store. Thus, Golden Fuel was not entitled to summary judgment on its breach of contract claim. The Court found that the contract signed by Appellants was ambiguous as to whether they had signed in their individual capacities or on behalf of Muyyad, Inc. As such, Appellants were entitled to present evidence at trial concerning their intentions and Golden Fuel's understanding as to who had signed the contract. The Court noted, "An agent acting within the course and scope of its agency relationship with a disclosed principal is not liable for the debts or obligations of the principal arising from contracts which the agent may negotiate or execute on behalf of such disclosed principal." The Court further stated, "If the contracting party knows the identity of the principal for whom the agent purports to act, the principal is deemed disclosed." In other words, a corporate officer, who negotiates and executes a contract on behalf of an entity, should take care to disclose to the other contracting party that he/she is only acting on behalf of the corporate entity in order to avoid being liable for corporate debts.

TRUST, BUT VERIFY: WHY RELIANCE ON THIRD PARTY PROFESSIONALS CAN COST YOU

Current market conditions have created one of the best buyer's markets for real estate in recent history. However, potential purchasers should be cautious in how they proceed with these transactions. The assistance of a competent real estate attorney, especially in large commercial transactions, can be invaluable. As this cautionary tale demonstrates, proceeding without the services of a real estate attorney may result in the need to hire a good litigator.

In the recent case of *Reamco Development Corp. v. 499 Corp.*, 992 So.2d 431 (Fla. 4th DCA 2008), the Fourth District Court of Appeal presided over a dispute that exemplifies the pitfalls of relying upon third party service providers in real estate transactions. In that case, the real estate contract at issue identified an effective date of February 1, 2005, and provided the buyer with a forty-five day due diligence period. During the due diligence period, the buyer could terminate the contract, for any reason, and receive a full refund of his deposit. The forty-five day due diligence period began to run on February 1, 2005, and thus expired on March 18, 2005. The buyer's deposit became non-refundable at that time.

After the contract was executed, multiple negotiation sessions led to a series of contractual addenda. The first was executed on February 9, 2005, and the second was signed on February 11, 2005. Each of the addenda served to alter the identities of the sellers, but they also clearly provided that the effective date of the contract remained February 1, 2005.

Accordingly, no change was ever made to extend the expiration date for the due diligence period.

Following execution of these addenda, Sterling Title Agency, which had been hired by the sellers to provide title insurance for the property, sent the following letter to the buyer:

"I believe the buyer's due diligence period expires on March 28, 2005. I used the date of the last Addendum to start the clock. Please let me know by that date if the buyer is satisfied and prepared to close on or before April 30, 2005."

The buyer erroneously relied upon this mistaken representation and assumed it served to alter the due diligence period identified in the original contract and subsequent addenda. On March 24, 2008, the buyer gave notice of termination of the contract and requested that its deposit be returned. Not surprisingly, the sellers refused. They asserted that the due diligence period had already expired, thus rendering the deposit non-refundable.

The buyer filed suit against the sellers and Sterling Title Agency. The buyer alleged that it had detrimentally relied upon the representations of the seller's agent. But for the letter it received from seller's agent, the buyer claimed it never would have forfeited the deposit. The appellate court flatly rejected buyer's argument. The court stated that Sterling Title Agency had been hired for the sole purpose of providing title insurance. It did not have authority to alter the terms of

the contract or otherwise bind the sellers.

The Court also found that Sterling Title Agency did not actually provide "false information for the guidance of others in their business transactions." As a result, the buyer was not able to seek recovery of its deposit directly from Sterling Title Agency either. In rejecting buyer's claim against Sterling Title, the Court stated that "the letter [in this case] does not contain 'false information,' but rather the expression of a belief as to when the due diligence period expires with an explanation of how the author of the letter reached that conclusion." This subtle distinction turned out to make the difference between the buyer recovering on a valid cause of action and the buyer's loss of his entire deposit.

The pragmatic lesson to be derived from this case is that clients must understand the roles, duties, and responsibilities of all the participants in a particular transaction. Absent this understanding, clients may fail to appreciate the nature and scope of each participant's authority. In this same vein, a party to a transaction should never allow ambiguity to linger. If representations are made that contradict previous understandings, then the actual positions of all interested participants should be promptly nailed down.

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“HEY I SAW YOUR LAWYER ON TV LAST NIGHT!
BY THE WAY, I’M SUING YOU.”

Black’s Law Dictionary defines defamation as: “An intentional false communication, either published or spoken, that injures another’s reputation or good name. . . . [It] includes both libel and slander.” A party can be held liable for defamation not only for something it says, but also for something one of its employees or agents says. An insurance company found this out the hard way in *Dreggors, et. al. v. Wasau Insurance Co., et al.*, ___ So.2d ___, 33 Fla. L. Weekly D2429 (Fla. 5th DCA October 7, 2008).

The *Dreggors* decision was the latest event in a complicated legal proceeding dealing with a workers’ compensation claim and the insurance company’s attempts to prove it fraudulent. The case began in 1991 when a claimant filed against his employer’s workers’ compensation insurer. After a hearing, the judge of compensation claims awarded the employee attendant care benefits. The judge of compensation claims also characterized the insurer’s attorney’s conduct in the case as “reprehensible, insufficient, and shameful.” *Horning-Keaing v. Employers Ins. of Wasau*, 969 So.2d 412, 415 (Fla. 5th DCA 2007).

Multiple lawsuits concerning the workers’ compensation claim continued to rage. In the meantime, the insurer’s attorney appeared on the local news. During the broadcast segment, the attorney discussed a surveillance film that showed the claimant involved in activities which appeared to contradict the claimant’s workers’ compensation claim. The insurer’s attorney then characterized the case as being “the biggest workers’ compensation fraud case in the history of Florida.” 33 Fla. L. Weekly at D2430. Given the history of the case, the predictable happened. The claimant filed suit for defamation against, among others, the attorney and the insurer.

The trial judge granted summary judgment on behalf of the insurer finding no evidence in the record indicated the insurer had directed the attorney to make the statement or that the attorneys’ statement to the television station was “necessary or incidental” to his representation of the insurer. Thus, the trial court held the insurer was not vicariously liable for the attorney’s allegedly defamatory statement.

On appeal, the Fifth District reversed the trial court’s ruling. The appellate court noted that there is a presumption that an attorney acts as the agent for his client. The insurer therefore had the burden to show conclusively that the attorney had not been acting as its agent when he had made the statements to the television station. The record did not conclusively establish the nonexistence of an agency relationship according to the appeals court. The case was therefore sent back to the trial court for yet further proceedings.

The insurer also defended the appeal on the grounds that the attorney’s statement had been pure opinion. Under Florida law, an opinion, as opposed to a false statement of fact, is not actionable as defamation. The Fifth District concluded, however, that the sparse record before it did not conclusively establish that the attorney’s statement was pure opinion, as opposed to a mixed expression of opinion and fact. Such mixed expressions are actionable. The Court ruled therefore that summary judgment could not be upheld on that basis.

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