

1. Ralph is not liable to Tim. Tim v Ralph

Under Texas law the corporate structure is such as to limit the liability of shareholders, officers and directors. As a shareholder, Ralph is not liable to Tim. A corporation provides safety for shareholders that do not engage in corporate business, that do not hold out as corporation, transact business on behalf of corporation, or use corporation as shield for personal liability. Shareholders own a portion of the corporation, but do not make fundamental decisions or engage in business transactions. The board of directors and managers can hold the corporation bound to contracts. Here Ralph is a shareholder only. He is not a director, officer or employee. Ralph engaged in a conversation with Tim regarding the state of affairs with construction. Although Ralph and Tim are friends, a fiduciary duty did not exist, or was a duty created by Ralph stating a good faith belief that construction was capable of understanding the project. Ralph did not hold himself out as an authorized agent of construction, and ultimately told Tim to call Steve the president of construction. Therefore, Ralph as a shareholder, with no express, implied or apparent authority to bind corporation and with the opinion only, will be protected from liability. Additionally, he did not engage in, supervise, or support construction's activities and negotiations with Tim.

2. Steve is liable to Tim. Tim v Steve

Under Texas law officers and directors are not liable for the acts of the corporation. The corporate structure provides security and shelter for officers and directors to make decisions for the corporation without incurring liability. However, an officer will be personally liable under several circumstances. If he/she breaches a duty of care, breach of duty or loyalty, if the corporate veil is pierced, or if the officer directly engages in conduct that he supervises, contributes to that is detrimental to the corporation. Officer can be held personally liable for those actions if actions caused detriment to corporation. Officers are given great leeway to make decisions but if they breach of a duty of care, either by malfeasance (bad act) or non-feasance (no action) they may be liable. Also, the determination of liability will be judged on the business judgment rule. This allows officers and directors to make good faith, informed decisions, based on a reasonably prudent person standard that may cause a detriment to the corporation, but will excuse liability. Additionally, under a duty of loyalty, he had a duty to not self-deal. Lastly a corporate veil will be pierced if a court finds that the corporation is the alter ego, and not acting like a corporation, but really a way to protect liability for personal business dealings.

Here Steve both the duty of care and loyalty. As an officer he is the person who can bind the corporation to contracts and should operate as a reasonably prudent officer. He is the President. He misled Tim as to the accounts, falsified records, and intentionally misrepresented the capitalization and profits of the corporation. Although he believed he could pay the debt, his belief was not in good faith. His protection under the Business Judgment Rule will be lost. He intentionally, knowingly misled Tim, without good faith, and to the detriment of the corporation. He breached his duty of loyalty as a fiduciary and authorized agent by his malfeasance.

Steve also breached a duty of loyalty to construction. As a fiduciary he had a duty to not compete, usurp corporation opportunity or self-deal. Here he used funds of construction to pay salary and personal expenses. Although Steve may use funds to pay himself a salary, he has an obligation to creditors and keep the company funded, prior to paying his own salary and personal expenses appear that the corporate veil could be pierced as Steve was using corporate funds to pay personalities before corporation obligations and in light of the under capitalization, this could be an alter ego. Therefore, Steve could be liable in Tort to Tim for damages or for breach of contract.

1. Ralph is not liable to Tim. In Texas, a shareholder does not have liability for the action of the corporation general. If the corporation is a closely held (35 or less SHs) corporation and shareholders take on decision making roles, then the court may impose liability. If, in this situation, Ralph acted on behalf of the company or represented himself to Tim as a manager, then Tim might have an action against Ralph if he acted in reliance of his authority. Here, Ralph had neither implied nor express authority and did not hold himself out as one who could bind the corporation or act on its behalf. We also have no facts to indicate that Construction Corporation is a close corporation. From the facts it is clear that Tim asked Ralph a question about a corporation that Tim knew Ralph was a shareholder of and that is all. Furthermore, Ralph directed Tim to the corporation's president to gather more information. Ralph is not liable to Tim.

2. Steve is not personally liable to Tim, but his actions will create liability in the corporation through his contract with Tim. Furthermore, Steve has acted in violation of his duty to the corporation and should be held liable to it. Generally, the directors and managers of a corporation are not liable to third parties for their actions on behalf of the corporation. If their behavior / actions are within the scope of their work for the corporation and in furtherance of it, the corporation will, itself, be liable for breaches of its managers.

In the current case, Steve made misrepresentations to Tim on behalf of the corporation in furtherance of gaining a contract that he believed would return the corporation to a profitable status. To this extent, the corporation should be held liable for Steve's actions and not Steve, personally.

However, Steve exercised self-dealing and breached his duty of loyalty to the corporation when he used funds received to pay personal expenses rather than paying the corporation's suppliers. Steve may also have breached the duty of loyalty when he paid his salary instead of the suppliers, although we do not have enough facts to determine whether this was an action within his authority.

Due to the fact that Steve breached his duty to the corporation, which eventually gave rise to repossession of corporation equipment and suit by Tim, the corporation will likely not reimburse Steve for any damages a court may find against him in a suit brought by Tim. (To clear up the procedure, Tim will file suit against Steve and the corporation. Steve would not normally be personally liable for damages, but if a court were to award damages against him, the corporation would indemnify him to the extent that he was successful and acting on its behalf. However, as the corporation has a claim against Steve as well and it is questionable whether he acted appropriately, it will not likely reimburse him. In fact, it may have further damages against him for his breach of duty and he may further be replaced by another president if the corporation does not go bankrupt.)

1. Ralph is not liable to Tim. The shareholders of a corporation are not personally liable for the debts and obligations of the corporation. However, shareholders may be held liable under the veil piercing doctrine. The Business Organizations Code (BOC) applies to this corporation because it was formed in 2006. Under the BOC, the doctrine of veil piercing has been incorporated, and a shareholder can be held personally liable for the debts of a corporation band on a contract if the shareholder participates in a scheme to perpetrate actual fraud for the direct benefit of the shareholder. There, Ralph, as the shareholder, told Tim, the contractor, that he believed Construction Corporation was financially sound and directed Tim to consult with the corporation's president, who misrepresented the corporation's financial condition. This statement by Ralph is not sufficient to constitute actual fraud. Further, there is an argument that Ralph benefited from the contract between Tim and the corporation. However, such argument is weak since any benefit Ralph received was marginal and indirect. Therefore, because Ralph did not participate in a scheme to perpetrate actual fraud and did not receive any direct benefits, he cannot be held personally liable to Tim under the veil piercing doctrine.

2. Tim is liable to Tim. Generally, the officer of a corporation is not personally liable for the debts or obligations of the corporation. However, an officer may be held personally liable under the doctrine of veil piercing. (as explained above). Under the BOC, the officer can be held personally liable for the debts of the corporation under a fraud if he committed actual fraud and received a direct benefit. Here, Steve as the president of Construction Corporation provided to Tim false financial statements indicating that the corporation's accounts payable were current and that it had conducted profitable operations in 2007. However, Steve knew these statements were false and made them with the intent that Jim would act in reliance of such statements. Therefore, Steve has committed actual fraud. In addition, Steve has received a direct benefit from the contract since he used funds received by Tim to pay for his salary and some personal expenses. Therefore, because Steve has committed actual fraud and received a direct benefit as a result, he will be held personally liable for the corporation's contract with Tim under the veil piercing doctrine.

Additionally, Steve may also be held personally liable based on the alter ego common law theory of veil piercings. Texas could have applied the alter ego to pierce the corporate veil where the officer/director of a corporation has used the privilege of incorporation for an improper purpose and justice requires. Based on the present facts, a court could apply such theory to hold Steven liable since he abused Construction's corporate status to gain a personal and improper benefit. Further, justice would require to hold Steven personally liable if the corporation's assets would not be sufficient to compensate Jim for his loss under the contract.