

ANSWER TO QUESTION NO. 13

This question raises the issue of piercing the corporate veil and holding the shareholders liable for any judgment. With respect to this issue, the examinee should discuss whether the corporate veil of Fish-On Charters, Inc. could be pierced so as to establish personal liability against the shareholders for any personal injury judgment.

Because the shareholders of Fish-On Charters, Inc. participate in the management of the corporation, and family members control the majority of stock, it is considered a closely held corporation under Michigan law. *Estes v Idea Engineering and Fabricating, Inc*, 250 Mich App 270, 281 (2002).

As a general matter, the law treats a corporation as an entity separate from its shareholders, even where one individual owns all the corporate stock. *Kline v Kline*, 104 Mich App 700, 702 (1981). In some limited circumstances, courts will disregard the corporate form and hold a director personally liable for corporate debt. To do so is called "piercing the corporate veil," and though not a cause of action, it is a doctrine that fastens liability on an individual who uses the corporation as an instrumentality to conduct his own personal business with individual liability arising when a fraud or injustice is committed on third parties dealing with the corporation. *In re RCS Engineered Products Co., Inc*, 102 F3d 223, 226 (CA 6, 1996). Although there is no one rule or test for deciding when it is appropriate to pierce the corporate veil, Michigan courts have generally said that to pierce the corporate veil, the corporate entity must be found to be a mere instrumentality of another individual or entity. *Foociland Distributors v Al-Naimi*, 220 Mich App 453, 456 (1996). The court must also find that the corporate entity was used to commit an injustice, wrong or fraud, and there must have been an unjust injury or loss to the plaintiff. *Rymal v Baergen*, 262 Mich App 274, 293-294 (2004). All facts and circumstances surround the corporation, its economic justification and its operation, must be considered to determine if the corporate structure has been abused. *Klager v Robert Meyer Co*, 415 Mich 402, 411-412 (1982).

Because we are dealing with a motion for summary disposition, the question is whether there are sufficient facts to allow the case to go to the jury. MCR 2.116(C) (1). Here, in order for Doe to recover from these individual defendants personally, she must pierce the corporate veil. She clearly will not succeed as to Betty, Barbara and Bobby, but might have enough evidence as to Sandy. Although Betty, Barbara and Bobby participated in a couple of poor decisions (not reinvesting and allowing Sandy complete

control over the bank account), and allowed the corporation to be run very informally and without much supervision, none of them utilized the corporate entity or property for their own personal use. Thus, there is no genuine issue of material fact that none of the three used Fish-On Charters as an instrumentality to commit a wrong or fraud. They should not be held personally liable. The better argument is against Sandy.

The facts show that Sandy exercised complete dominion and control over Fish-On Charters, and disregarded corporate formalities to benefit himself. For example, Sandy unilaterally decided to discontinue all liability insurance held by the company, and to pocket corporate revenues for his own use, in order to maintain his salary level despite reduced revenues. Sandy sought out directors who he believed would give him full authority over the company, and convinced them to cede control over the bank account. Sandy also used the boat for his personal use, helping to eliminate the line between personal and corporate property. Fish-On Charters was essentially the "alter ego" of Sandy. Thus, sufficient facts support the argument that Sandy used Fish-On Charters as an instrumentality of his own.

The next question is whether Sandy used the corporate entity to commit a wrong or fraud. The evidence on this point is that Sandy must have used the corporate entity to discontinue the liability insurance. Arguably Sandy misused or disregarded the corporate form by not repairing the boat (which led to Doe's injury) for the sake of his own pecuniary gain, ignoring any real corporate formalities, and purposefully nominating shareholders whom he could control. Also, Doe can argue that she suffered an unjust loss in that she will likely recover a judgment against the company, but cannot recoup the monies because Sandy had operated the company recklessly with the sole purpose of lining his own pocket, rather than reinvesting into the company. The motion as it pertains to Sandy should be denied.

The motion should be granted as to personal liability against Betty, Barbara and Bobby, and denied as to Sandy.