



SOLE PROPRIETORSHIPS & PROTECTING CORPORATE FORM

Dear Friend:

Many of you are small business owners and many of those small businesses are sole proprietorships. I am sure you realize that it is important to incorporate your sole proprietorship, or business, to protect you and your family from personal liability. Pennsylvania Law shields officers from corporate liability absent a piercing of the corporate veil or application of a participation theory. See First Realvest, Inc. v. Avery Builders, Inc., 600 A.2d 601 at 603 (1991). However, confusion regarding liability is common in sole proprietorships; often times, sole proprietors will sign contracts in their own names. In such situations, another party alleging a breach of contract may attempt to pierce the corporate veil by arguing that the contract or agreement was entered into by the individual who then tries to shift liability to the sole proprietorship. In order to limit the appearance of impropriety, which could cause the piercing of the corporate veil, the sole proprietor must be especially careful to clearly limit their personal liability on the face of a contract or document. Strauss & Co. v. Berman, 297 Pa. 432, 435. Otherwise, without clearly limiting personal liability on the face of the contract or document, the individual signature may import personal liability. See Strauss, id. citing Flexlume Corp. vs. Norris, 98 Pa. Super. 530, 533-534.

In the case of Schwenke, Inc. v. JP Construction, Inc. and Jeffrey Carozza, plaintiff was a sub-contractor who was hired to perform services under a contract, specifically to provide exterior insulating finishing services on behalf of the general contractor, Mr. Jeffrey Carozza, and his company, JP Construction, Inc. Mr. Carozza accepted the contract with Schwenke by signing his name and, underneath it, handwriting his company name, JP Construction, Inc. When Carozza did not pay Schwenke due to alleged defects in the work, Schwenke sued JP Construction, Inc. and Jeffrey Carozza. Jeffrey Carozza sought to avoid personal liability in the case arguing that only his company should be liable. However, the court held that since Mr. Carozza signed his own name to the contract and did not limit his agreement to make payment as a representative of his company, he exposed himself both to personal liability as well as to liability of the company.

Accordingly, as a sole proprietor, it is very important when signing any contract to indicate you are signing the contract solely as an agent of the company and that it is the company itself which is a party to the contract.

Should you have any questions about this or any other legal issue in your business affairs, please do not hesitate to contact us directly.

Best personal regards,

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