

CORPORATE FRAUD – OR NOT?



COUNSEL'S CORNER

TransPecos Banks made a series of loans to Roger Jones in 1998 - 2001. As collateral, Jodi Strobach (Mr. Jones' daughter) pledged a 220-acre farm she owned, and Jodi also assigned the Bank the right to receive farm subsidy payments from the USDA.

Another loan made by Roger to the Bank was secured by six more tracts of land owned by both Roger and Jodi. Those mortgages were all subordinate in position to other lenders, including the SBA, Farmers Home Administration and Farm Credit Bank of Texas.

Roger fell behind on his loan payment in 2003. So a Bank officer agreed to a two-step plan to refinance all of Jones' loans.

The first step was to have Jodi form a new corporation into which she would transfer her 220-acre farm together with two other tracts of land she owned.

The second step was to have the new corporation obtain a loan from the Bank, secured by those three tracts of land and by the USDA farm subsidy payments.

Evidently the Bank was responsible for devising the plan, the Bank prepared all of the documents and Jodi merely showed up at the Bank to sign the documents as requested by her father and the Bank.

To implement the plan, Jodi formed Jones-Strobach Farms, Inc. as a Texas corporation in February 2003. Jodi and Roger were named as Directors; Jodi was the President while Roger was the Treasurer and Registered Agent. Jodi maintained 100% ownership of the stock, and Roger had no involvement after it was formed.

A few days after filing the Articles of Incorporation with the Texas Secretary of State, Jodi signed a Warranty Deed transferring her interest in the three tracts of land to

the new corporation, and in March 2003, the Bank made two loans of \$160,000 each to the new corporation and Roger.

The corporate Note was signed by Jodi in her capacity as President of the corporation. As well, Jodi signed a Mortgage in her corporate capacity as President, pledging to the Bank the three tracts of land now owned by the corporation.

The 2003 loans were kept current through 2007. However, the loans became delinquent and the Bank foreclosed in May 2008 on all the loans.

In December 2008 the Bank sent a demand letter to the corporation, advising that \$31,000 remained due and owing. In 2012 the Bank sued Jodi, attempting to hold her personally liable for the balance owed on the corporation's 2003 loan.

Both Jodi and the Bank agreed that Jodi had signed the loan as the corporation's President, never intending for Jodi to be personally liable. Remember that Jodi had not signed a personal Guaranty or anything similar.

The Bank's theory, however, was that Jodi formed Jones-Strobach Farms, Inc., as a sham corporation with valueless assets, in order to defraud the Bank, with no intent of ever repaying the debt and with the sole goal of avoiding personal liability.

At trial, Jodi claimed she could not be held personally liable for the debts of the corporation which she had formed solely at the Bank's request. The trial court ruled for Jodi; the Bank appealed.

The Court of Appeals reviewed the uncontradicted evidence that the Bank had devised the plan, prepared all the documents and asked of Jodi only that she come to the Bank to sign the new loan papers. There were no false representations and there was no false information that induced the Bank into making the 2003 loan to the corporation.

The Bank was, as determined by the Court of Appeals, fully aware of the circumstances when it accepted the highly-encumbered land as collateral for the 2003 loans. Regardless, the Bank suggested the plan, implemented and papered it. Consequently, the Court of Appeals had little trouble affirming the Judgment of the trial court.

Jodi Strobach was not personally liable for a corporate loan she did not guarantee. Jodi won again.

See *TransPecos Banks v. Strobach*; Cause No. 08-14-00059-CV; Tex. App. Dist. 8; May 2, 2016: <http://law.justia.com/cases/texas/eighth-court-of-appeals/2016/08-14-00059-cv.html>.

Lessons learned:

1. It is a powerful tool to form and use corporations, limited partnerships and limited liability companies. Texas Courts *get it*, and if there is no fraud then neither the shareholders, the directors nor the officers will be held liable for the civil debts of the entity or each other while it is properly formed and maintained.
2. One might wonder if perhaps this outcome could have been different if this was a plan formed and implemented by Jodi, instead of the Bank. As well, presumably there would have been no lawsuit if Jodi had signed a personal Guaranty that was properly drafted.
3. While entities are useful to hold and mortgage real estate, the same theory applies to brokerage businesses. A properly formed and maintained entity should insulate the owners of the company from the debts and obligations of the entity and its shareholders or members, and as such is highly recommended.

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