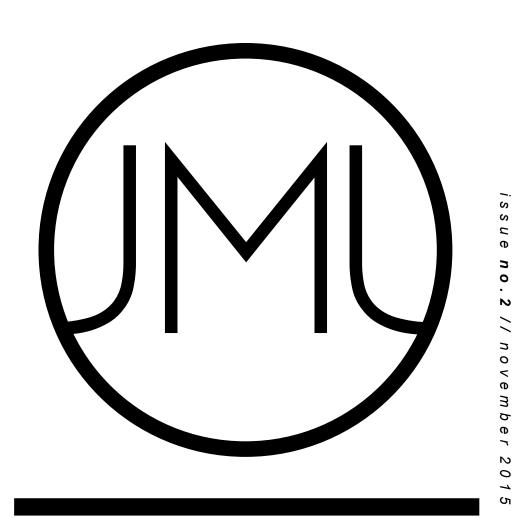
Don't Turn Your Business into a Scene **From Reality** T.V.



If I were a TV producer, I'd suggest there's no better drama-filled, high stakes thrill of a story than that of a business that fails to keep its corporate house in order and, as a result, things blow up. But I'm not a TV producer. I'm a business lawyer. So I'll share with you some of the tales of woe I've experienced through my clients over the course of my career, in the hopes that you avoid these costly mistakes by taking action to get your corporate records up to date:

SCENE 1

Catfight in the Fashion World: No Partnership Agreement and a Whole Lotta Sass

T wo lifelong friends, neighbors and business professionals. One with a passion for fashion, a skill for design and a head for business. The other a marketing guru with connections far and wide. The two thought it was a match made in heaven and feverishly went to work on an innovative clothing line that was par to none. They dedicated countless hours and dollars to the goal they'd set. Giving up sleep, free time and other business ventures to pursue their dream. They were "partners" in crime. Thelma

to take off. Then it got real. Never having entered into a formal agreement, neither Thelma nor Louise reduced to writing who

and Louise. Until the business started

had equity in the venture. No one determined what the voting rights would be. There was no

and decided, "you're not my partner, I hired you as an employee." Louise was aghast. But without any written document, this was going to be a she-said she-said fight that wouldn't end well. Thelma and Louise lawyered up and the mudslinging commenced. The lifelong friends, practically sisters, started a letter-writing campaign in which they

clarity as to who was entitled to claim ownership to the

intellectual property. Thelma suddenly looked at Louise

disparaged one another, made allegations of breach of fiduciary duty, infringement of intellectual property, demanded a partnership accounting and made other claims that irrevocably broke the 25-year relationship made of gold. In the end, the business shut down, the women privately resolved the dispute and went their separate ways. Forever. All of this could have been avoided if the women had sat down with an attorney at the outset of the venture

and formed a legitimate business entity with appropriate governing documents.

Sibling Rivalry on Steroids. Failure

SCENE 2

to Disclose in Writing = Battle to the 2D Circuit

also took a Board seat with the company, only one took an active role as CEO/President of the family operations. Initially, the set up was great. The business was thriving and the siblings were happily relishing in their success and wealth. But when the business took a turn for the worse, one of the brothers turned to his sister and said: "THIS IS ALL YOUR FAULT!" You see, brother was accustomed to receiving a hefty salary as an officer of the company - which role entailed signing checks once a month - on top of pretty lofty dividends. So when his sister's efforts no

nce upon a time, a dad had a thriving

four doting children. While each of those children

business that he passed down equally to his

The fight boiled down to an issue of disclosure - reduced to a writing in board minutes. Sister

longer afforded him the extra income he had grown

accustomed to receiving, he wanted her to pay. So he

sued. In federal court.

being paid for his efforts, the brother insisted that he was never made aware of the terms and conditions of the engagement, including the cost of his services. He claimed that his sister and her husband essentially looted the company's assets. Many years and millions of dollars in legal fees later, after fighting in the district court, then at the appellate level and then in state court on issues that the federal judge threw out of his court, the family legal dispute came to an end.

retained the service of her husband to assist with the

various transactions the business took on in an effort to

salvage a sinking ship. Although it was very clear to

the board that the sister's husband was retained and was

disclosure that was reduced to writing in the corporate books and records.

None of this Thanksgiving dinner drama had

to happen - if there was simply adequate

Secretary of State

SCENE 3

BC company does business in NY. It had not filed its biennial statement, and any a breach of contract claim against XYZ company that is not otherwise deemed "in good standing" by the New York Secretary company for failure to pay for ABC's services. So of State stands to face the challenge that it sues in state court. XYZ answered and sought to ABC faced, and lose the privilege of being dismiss ABC's claims because ABC was not in good able to make use of the NY court system. standing in the State and, therefore, was precluded from making use of the court system. Unless ABC

GOTCHA! Can't Sue Here if You

Are Not Up to Date with the

court battle against XYZ even with a valid cause of action for breach of contract. This did not have to happen! An LLC that has not met its publication requirements, a corporation that has SCENE 4 You Think your Business is Worth **What? Not with This Mess**

corrected the problem quickly, it stood to lose the

staying on top of registration requirements.

have helped to reduce how bad the company looked to

the proposed purchaser, but because the owners didn't

bother to seek counsel before shopping the company for

Beware of making the simple but potentially costly

mistake of not properly forming your company or not

The owners of a company were desirous of selling their in of selling their interests to a third party. When the prospective purchaser started to conduct

due diligence, they asked for the usual things like sale the consequences were bad. financials, material contracts and corporate books The proposed purchaser took one look and records. The problem is that there were no at the company's dearth of books and corporate books and records. There was nothing to records and decided the company's value show who currently owned the company, who were was far less than what the owners wanted.

the company's officers and directors, what, if any, management or other employment contracts existed and what the company rights and obligations were to those people and whether or not the company was in good standing in the jurisdictions where it was doing business. Some "corporate cleanup" could Don't get caught up in the drama. Beware of the pitfalls of not maintaining proper books and records and consider cleaning up your "corporate house" before you become a reality star ... for all the wrong reasons!

If you think you've got a dynamo business, don't shoot yourself in the foot by not maintaining your books and records. Being sloppy or negligent in this area of your enterprise can devalue your business tremendously, and can cause you to lose a prospective investor in a heartbeat.



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