

RSR Collections & Creditors' Rights Update

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Topic: Credit Applications:
Holding Agents of Partially or
Undisclosed Principals to Their
Signatures

Personal Liability of an Agent

Many states have long adhered to the common law rule that an agent contracting on behalf of a known principal does not become personally liable to the other contracting party in the event of a breach. However, where the agent fails to disclose, or just partially discloses, the principal, the agent may be personally responsible for the debt. Importantly, this can create a potential valuable, additional **collection tool** where the business debtor is

defunct and during times where limited liability companies appear and disappear with frequency and ease. The agent can be the owner, officer, member or manager of the respective business entity, rendering the law even more valuable from a collections and collectability standpoint. Below is an example to help clarify this rule when it may apply.

Facts: A Wisconsin Limited Liability Company, XYZ, LLC, entered a credit agreement with Widgets, Inc. One of XYZ, LLC's members, Mr. Johnson, signed the credit agreement. He signed the agreement, "Mr. Johnson-team leader, officer." Also, the letterhead of a letter sent to Widgets, Inc. by XYZ, LLC, prior to entering the credit application, stated "XYZ," but did not disclose that XYZ was a limited liability company.

Potential Outcome: XYZ, LLC's signing member, Mr. Johnson, may be held personally liable for failing to disclose, or only partially disclosing, that he was purporting to act on behalf of a principal with a designated corporate status, here, an LLC.

Rationale: Without complete and accurate disclosure of the "LLC" status of the principal *at the time of contracting*, the creditor is deprived of the opportunity to negotiate additional terms in light of the potential limited liability of the other contracting party, such as a personal guaranty.

Practical Points – Personal Liability of Agents of Undisclosed Principals

-The credit or other agreement may be dispositive. In Wisconsin, the burden of demonstrating sufficient notice of corporate status is on the agent being charged with lack of notice.

-An improperly signed credit agreement can therefore create a claim akin to a personal guaranty and provide additional leverage over debtors, pre-and post-suit.

-If a client enters a credit agreement and the party with whom the agreement was entered changes its corporate status during the relationship, a personal claim may exist for failing to disclose this change, too.

-This is all very fact-driven; as such, the key is to have accurate documentary (i.e., a credit agreement or other contract) proof to support the claim.

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Meet Some of Our Team (left to right)

Diane Schmitz	Team Leader, Accounting and Financials; Leader, Construction Lien Support
Barb Killilea	Team Leader, Efilng and Litigation Support; Judgment Execution Support
Kasey Kultgen	Senior Certified Collector, Commercial Collection Training Institute, CCA of A; Team Leader, Asset Search Team
Yara Rosario	Associate Degree in Paralegal Studies; Leader, Claim and File Intake; Litigation Support; Debtor Investigation Support



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