

## VIRGINIA BOARD OF BAR EXAMINERS

Roanoke, Virginia - July 30, 2002

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*Write your answers to Questions 6 and 7 in Answer Booklet D - (the **BLUE** booklet)*

6. Hugo and Ronny, both residents of Fairfax County, Virginia, were carpenters by trade. Perceiving a significant demand for home repair and handyman services in Northern Virginia, in 1992 they formed The Homeowner's Friend, Ltd., a Virginia stock corporation ("Homeowner's"). Homeowner's authorized and issued 1,000 shares of common stock. Hugo and his wife, Ethel, jointly own 650 shares. Ronny and his wife, Lucy, own the remaining 350 shares.

Hugo and Ronny were named as the initial directors in the Articles of Incorporation. Chris, their high school shop teacher, joined the board of directors as an unpaid member. Only Hugo and Ronny were officers of Homeowner's.

As the business grew, Hugo became increasingly disenchanted with Ronny. Hugo felt Ronny was enjoying the success of the business more and more, but contributing to that success less and less. Hugo decided he wanted to own the entire business himself and run it as he saw fit.

Hugo submitted a written proposal to purchase Homeowner's assets for \$1 million and requested that a special board of directors meeting be held to consider the asset purchase proposal. Based on information furnished to her by Hugo and without an independent review of the corporate books, an accountant Hugo had hired reported to him that Homeowner's was worth between \$900,000 and \$1.2 million. Hugo submitted this report along with his written proposal.

At the special board of directors meeting, Ronny voted against the proposal, stating that the price was too low. Slappy Hull, Homeowner's former independent accountant and Ronny's current golfing buddy, had once told Ronny on the golf course that Homeowner's was worth \$2 million. Ronny also claimed that Hugo had presented no reliable evidence that the \$1 million offer was a fair price.

Hugo voted in favor of the proposal. Chris was not particularly familiar with Homeowner's business operations. He was persuaded by Hugo to vote in favor of the proposal, having seen the report submitted by Hugo's accountant, and because Hugo had secretly promised Chris a job with Homeowner's after the sale was completed. Ethel knew about the job offer to Chris, but neither Ronny nor Lucy knew about it. The board of directors voted 2-1, in favor of the sale of the assets of the business to Hugo, over Ronny's objection. The proposal was then submitted to the shareholders. Hugo and Ethel voted their 650 shares in favor of the sale, and Ronny and Lucy voted their 350 shares against it. The asset purchase transaction was then consummated.

Ronny is furious that he has been ousted effectively from the business. Ronny and Lucy assert that the transaction operates to the detriment of the corporation and wish to overturn the transaction.

- (a) On what substantive grounds can Ronny and Lucy seek to overturn the asset purchase transaction, and how would a court be likely to rule on each ground? Explain fully.
- (b) What type of action could Ronny and Lucy file to vindicate what they perceive as the harm to Homeowner's, and what prerequisites and procedural steps, if any, are required to effect such a suit? Explain fully.

**Reminder: Write your answer to the above question #6 in Booklet D - the BLUE Booklet.**

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7. Olde Dominion Stone Company ("Olde Dominion"), a Delaware corporation with its principal place of business in Powhatan County, Virginia, had a long-term granite supply contract with United Resources Corporation ("United"), a Colorado corporation with its principal place of business in Colorado. The contract called for United to deliver 2,000 tons of granite to Olde Dominion in Virginia on the 15<sup>th</sup> day of the first month of each calendar quarter. The contract was signed on December 1, 1990, and required quarterly deliveries from January 15, 1991 through October 15, 2000. It provided in part that, "This contract shall be construed and enforced in accordance with Colorado law."

On July 15, 1995, United missed its delivery. Olde Dominion waited until July 17, and then its president, Roger J. Williams, called the president of United, Bob Sargent, to inquire what had gone wrong. Sargent replied, "Oh, I thought I called and told you. We won't be able to make the July delivery. But don't worry, we'll be back on track in October." Williams was annoyed at the lapse, but United's performance had been generally satisfactory up to then, so he took no further action at that time. United met all further shipping requirements.

On February 1, 2001, however, Olde Dominion sued United in the Circuit Court for the County of Powhatan, Virginia for damages sustained on account of United's failure to make the July 15, 1995, delivery. Upon receiving an affidavit that United was a non-resident of Virginia, the Clerk of the Circuit Court sent the notice of motion for judgment to the Secretary of the Commonwealth of Virginia, who forwarded the notice to United in Colorado.

United appeared by counsel and filed a motion to quash the service of process on the ground that the court lacked personal jurisdiction over United. After a hearing, the Judge denied the motion to quash. United then filed its grounds of defense asserting, among other things, that Olde Dominion's claim was barred by the statute of limitations.

At his deposition, President Sargent of United acknowledged the July 17, 1995, conversation with President Williams of Olde Dominion. He agreed that United had failed to deliver granite as scheduled on July 15, 1995, and explained that, "We simply couldn't do it right then. Our sub-contractor was behind in his deliveries, and there was nothing we could do."

United moved for summary judgment on the ground that the claim was barred by the applicable Virginia statute of limitations. The trial court denied United's motion, holding that the claim was governed by Colorado's 10-year statute of limitations for causes of action based on written contracts.

Relying on Sargent's deposition, Olde Dominion moved for summary judgment on the issue of liability. United objected to the use of the deposition testimony and opposed the motion on the ground that material factual issues were in dispute. The Circuit Court granted Olde Dominion's motion and, following a subsequent trial on damages, entered judgment in favor of Olde Dominion in the amount of \$15,000.

- (a) Did the court err in denying United's motion quash service of process? Explain fully.
- (b) Did the court err in denying United's motion for summary judgment? Explain fully.
- (c) Irrespective of whether the court ruled correctly on United's motion for summary judgment, did the court err in granting Olde Dominion's motion for summary judgment? Explain fully.

**Reminder: Write your answer to the above question #7 in Booklet D - the BLUE Booklet.**

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***Write your answer Questions 8 and 9 in Answer Booklet E - (the PURPLE booklet).***

**8.** Prince William County, Virginia ("County") provides a health care plan, funded in part with local tax dollars, for its employees and their dependents. The County's existing plan defined the term "dependent" to include spouses and children. Recently, the County Board of Supervisors, by unanimous vote, amended its plan to also include within the definition of dependent "an unmarried domestic partner" of an employee, including same-sex partners as well as opposite-sex partners.

The definition of "unmarried domestic partner" that was adopted by the County for inclusion in its revised health care plan is one who --

- "a. Has resided with the employee for 1 year;

- “b. Shares with the employee the common necessities of life and basic living expenses;
- “c. Is financially interdependent with the employee; and
- “d. Is involved with the employee in a mutually exclusive relationship of support and commitment.”

The state statutes providing for the establishment and maintenance of local government employee health plans state in pertinent part as follows:

**Section 71.25(A):** Any locality may provide group life, accident, and health insurance programs for their officers and employees.

**Section 72.50:** The governing body of any county, city or town may, by ordinance adopted by a recorded vote of a majority of the members elected, establish a retirement system. The retirement system may provide sickness insurance coverage for the officers and employees of the county, city, or town and their spouses and dependents.

The term “dependent” shall mean a person who is “financially dependent” upon the covered officer or employee. The term “financially dependent” means that the dependent is a person who receives from the officer or employee over half of his or her support for the calendar year.

Taxpayer files a suit for declaratory and injunctive relief against the County challenging the amended plan as applied to “unmarried domestic partners,” alleging that the County acted illegally in amending the plan.

What is the governing legal principle the court will consider in determining whether the County acted illegally and, in applying that principle to the facts, how should the court decide the case? Explain fully.

**Reminder: Write your answer to the above question #8 in Booklet E - the PURPLE booklet.**

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9. In October 2000, Debtor’s business failed, and he was unable to pay his debts. At the time, he owned a house in the City of Norfolk, Virginia, which had been given to him as a gift by his father before Debtor’s marriage in 1990.

In November 2000, Lender filed a motion for judgment against Debtor in the Circuit Court of the City of Norfolk. Debtor was served with the motion for judgment on November 2, 2000. On November 5, 2000, Debtor gave his wife a deed to the house in Norfolk. The deed recited that it was given in consideration of “natural love and affection.”

In January 2001, Lender obtained a judgment for \$10,000 against Debtor. The judgment was promptly docketed in the Office of the Clerk of the Circuit Court of the City of Norfolk.

At the time Lender obtained and docketed the judgment, Debtor and his wife owned a farm in the City of Chesapeake, Virginia, which they had purchased after their marriage. Title to this farm was held by Debtor and his wife as tenants by the entireties.

On January 20, 2002, Debtor inherited from his father a farm in the City of Suffolk, Virginia. In February 2002, Debtor conveyed the Suffolk farm in fee simple to Smith in full satisfaction of a \$50,000 debt he owed Smith. Smith recorded the deed in March 2002.

In April 2002, Lender recorded duly authenticated abstracts of his judgment against Debtor in the Offices of the Clerks of the Circuit Courts of the Cities of Chesapeake and Suffolk.

Can Lender enforce his judgment against

- (a) The house in Norfolk? Explain fully.
- (b) The farm in Chesapeake? Explain fully.
- (c) The farm in Suffolk? Explain fully.

**Reminder: Write your answer to the above question #9 in Booklet E - the PURPLE booklet.**

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***Proceed to the short answer questions in Booklet F - (the GRAY Booklet).***