In Re Amber Lotus

Joan and Chris have been good friends since childhood. They live in an MBCA 1984 state that follows the 1914 Uniform Partnership Act and the 1976 Uniform Limited Partnership Act With the 1985 Amendments. They both married young, became stay-at-home housewives and mothers and raised children. When they reach their 40's and their youngest ones were rapidly approaching college, Joan and Chris decide that they want to take advantage of the more friendly environment towards women in the commercial world that has evolved since their girlhood years. As a result, they decide to go into the greeting card business. They specialize in greeting cards that reproduce the work of artists around the country. The cards are sold both with blanks inside and with verses for varying occasions. Chris’s family has been in the printing business for several generations so she has considerable exposure and connections to the business. Both she and Joan have a very developed interest in art: both were art majors in college and have continued the interest over the course of their lives by taking courses and engaging in artistic endeavors of their own on an amateur level. Thus they are quite confident in their ability to recognize talented works of others that will appeal to a niche market. But their greatest assurance of success in this area stems from the fact that Joan is third generation of an illustrious family of artists, designers and commercial artists. This facilitates their access to and discovery of talented artists in various parts of the country.
who have yet to be recognized or who have not yet involved themselves in commercial ventures.

So Chris and Joan start Amber Lotus Productions.

Though they begin small, the cards they print sell very quickly. After a while, instead of relying on commercial printers, they want to control the process and the quality of reproduction. So they decide to expand, lease commercial space and purchase their own printing equipment. In order to do so they need money. They approach Chris’s in-laws for assistance who make available $100,000. The in-laws agree to take 20% of the profits of the enterprise until Chris and Joan can repay the money. There is no stated time frame for when it will be repaid but it is understood that it will be a long time before repayment is made. After receiving this money, Chris and Joan lease the commercial space and purchase printing equipment.

Business continues to grow and expand. Chris and Joan want to take out loans from banks to finance the expansion. They are giddily happy that their venture is so successful. They realize they are in business for real and decide to incorporate. While they are in the incorporation process but before a certificate of incorporation is issued, they approach banks for loans representing themselves as Amber Lotus, Incorporated. Just before they go in to sign the final papers however they are informed by the attorney that the incorporation certificate has been received. Joan and Chris each receive 50% of the common stock issued by the corporation. Chris’s in-laws receive preferred shares that gives them the right to receive $5,000 in dividends if any dividends are paid and 10% of any additional profits that are distributed. Their liquidation rights are to receive $100,000 before anything is paid to the common shareholders. It is stated on the preferred shares that the corporation can repurchase the shares on demand for $100,000 at any time.

Business goes on swimmingly. The company has placed its cards in book stores and greeting card outlets across the country. Their reputation in the industry grows.

One day Joan is approached by an Eskimo tribe with a long tradition of extraordinary paintings by tribe members that goes back at least a hundred years. The tribe knew Joan’s grandfather who liked to travel around the world and draw the people he visited. The tribe is interested in depicting the paintings on calendars and selling them. The tribe is poor and it hopes by this means to raise money to upgrade the tribe members’ standard of living and send their youths to college; their hope is to increase the interaction with North American commerce while preserving the tribe’s heritage. Joan has always been interested in ethnic cultures so she is quite excited by the prospect of helping these particular people. She takes some of her own savings that she earned from Amber Lotus, Inc. and forms a limited liability company called “Indigenous Enterprises, LLC.” of which she and the tribe are members. This venture also proves quite successful.

Things continue happily for several years when one day Chris discovers that their accountant has disappeared. Along with him went most of the Amber Lotus’ financial assets. Chris discovered much to her dismay that the accountant had taken out several loans on behalf of the business and used the business’ physical assets and accounts receivables to secure the loans. Not only is Amber Lotus now devoid of any assets but it cannot cover its debts and is forced into bankruptcy. Obviously this is very distressing for Chris and Joan (and Chris’s in-laws). It is also extremely distressing for the creditors as well who want to have their debts paid. They are now seeking to go after whatever assets they can reach. Chris and Joan have become personally financially quite well off as a result of their undertakings.

Whose assets might the creditors go after and under what various legal theories? Chris’s? Joan’s? Chris’s in-laws? What about the assets (or some portion) of Indigenous Enterprises, LLC? Be sure to comment on any arguments in favor as well as against any potential liabilities you address. Does it matter whether some of the creditors where involved with Amber Lotus before incorporation? Does it matter that Chris and Joan never elected a Board of Directors and just gave themselves the title of Chief Financial Officer and Chief Executive Officer and divided the profits 50-50 after paying the in-laws their annual dividend of $5,000? Does it matter that Joan never discussed in advance with Chris about her decision to go into business with the Eskimo tribe? How would your opinion be modified if at all if this all took place in the state of Maryland? Are there other issues you deem as important to discuss?

Have a Happy Holiday Season and Rest Well for the Spring Term!