NY CLS Bus Corp § 630

Current through 2018 Chapters 1-356

New York Consolidated Laws Service > Business Corporation Law (Arts. 1 — 20) > Article 6 Shareholders (§§ 601 — 630)

§ 630. Liability of shareholders for wages due to laborers, servants or employees

(a) The ten largest shareholders, as determined by the fair value of their beneficial interest as of the beginning of the period during which the unpaid services referred to in this section are performed, of every domestic corporation or of any foreign corporation, when the unpaid services were performed in the state, no shares of which are listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or an affiliated securities association, shall jointly and severally be personally liable for all debts, wages or salaries due and owing to any of its laborers, servants or employees other than contractors, for services performed by them for such corporation. Before such laborer, servant or employee shall charge such shareholder for such services, he shall give notice in writing to such shareholder that he intends to hold him liable under this section. Such notice shall be given within one hundred and eighty days after termination of such services, except that if, within such period, the laborer, servant or employee demands an examination of the record of shareholders under paragraph (b) of section 624 (Books and records; right of inspection, prima facie evidence) of this article, such notice may be given within sixty days after he has been given the opportunity to examine the record of shareholders. An action to enforce such liability shall be commenced within ninety days after the return of an execution unsatisfied against the corporation upon a judgment recovered against it for such services. The provisions of this paragraph shall not apply to an investment company registered as such under an act of congress entitled "Investment Company Act of 1940."

(b) For the purposes of this section, wages or salaries shall mean all compensation and benefits payable by an employer to or for the account of the employee for personal services rendered by such employee. These shall specifically include but not be limited to salaries, overtime, vacation, holiday and severance pay; employer contributions to or payments of insurance or welfare benefits; employer contributions to pension or annuity funds; and any other moneys properly due or payable for services rendered by such employee.

(c)A shareholder who has paid more than his pro rata share under this section shall be entitled to contribution pro rata from the other shareholders liable under this section with respect to the excess so paid, over and above his pro rata share, and may sue them jointly or severally or any number of them to recover the amount due from them. Such recovery may be had in a separate action. As used in this paragraph, "pro rata" means in proportion to beneficial share interest. Before a shareholder may claim contribution from other shareholders under this paragraph, he shall, unless they have been given notice by a laborer, servant or employee under paragraph (a), give them notice in writing that he intends to hold them so liable to him. Such notice shall be given by him within twenty days after the date that notice was given to him by a laborer, servant or employee under paragraph (a).

History

Add, L 1961, ch 855, eff Sept 1, 1963; amd, L 1962, ch 834, § 44; L 1963, ch 746, eff Sept 1, 1963; L 1964, ch 725, § 8; L 1965, ch 803, § 24, eff Sept 1, 1965; L 1984, ch 212, § 1, eff June 12, 1984; L 2015, ch 421, § 1, eff Jan 19, 2016; L 2016, ch 5, § 1, eff Jan 19, 2016.

Annotations

Notes

Revision Notes:

Applies only to unlisted corporations and to ten largest shareholders in such corporations. Right of contribution given. See § 624, which gives employee right to inspect record of shareholders.

Editor's Notes:

Laws 1984, ch 212, § 2, provides as follows:

§ 2. This act shall take effect immediately and shall be deemed to apply where termination of services has occurred at any time within ninety days prior to, as well as at any time on or after, the effective date of this act.

Amendment Notes:

The 2015 amendment by ch 421, § 1, in (a), in the first sentence, added "domestic" and "or of any foreign corporation, when the unpaid services were performed in the state" and added "of this article" in the third sentence.

The 2016 amendment by ch 5, § 1, in (a), added "(other than an investment company registered as such under an act of congress entitled 'Investment Company Act of 1940')" following "domestic corporation" in the first sentence and added the last sentence.

Commentary

PRACTICE INSIGHTS:

WHEN SHAREHOLDERS CAN BE PERSONALLY LIABLE FOR CORPORATE DEBTS

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INSIGHT

It is axiomatic that shareholders are generally not personally liable for the debts of the corporation. Indeed, that is probably the primary reason for incorporation in the first place. In certain limited circumstances (not including fraud or ultra vires), however, shareholders have personal liability for certain debts of a corporation. For example, the ten largest shareholders of a corporation, for example, are personally liable for unpaid wages to employees. BCL § 630. The practitioner should be aware of this issue when advising clients at the formation stage.

ANALYSIS

BCL § 630 has been recently amended to provide that shareholders of foreign corporations are liable for unpaid wages.

For many years, BCL § 630 has provided that the ten (10) largest shareholders of a New York corporation could be held liable for unpaid wages payable to employees. Also, until 2015, there was no comparable provision in the New York Limited Liability Company Law. Thus, it was common for practitioners to advise clients upon entity formation of this issue and thus, consider the advantages of forming a foreign corporation or a limited liability company to avoid the possibility of an entity owner being held personally liable for unpaid wages.

Recently however, this has changed. First, as of February 27, 2015, New York's limited liability company law was amended to add new LLCL § 609(c), which essentially created a mirror provision applicable to the ten members of a limited liability

company with the largest percentage ownership. *See* LLCL § 609(c). Then, effective as of January 19, 2016, the New York legislature took the next step by extending the applicability of BCL § 630 to provide that the top ten (10) shareholders of privately held foreign corporations can now be held personally responsible for unpaid wages where services were performed in the State of New York.

As a result of these changes, the formation of a foreign corporation will longer insulate a shareholder from potential responsible for wages.

Advise passive investor shareholder to monitor corporation's business and finances.

BCL § 630 imposes full liability for unpaid wages on each of the shareholders, who are then relegated to seeking indemnification from other shareholders. The context in which this is most often problematic, of course, is in the investment context, where the shareholder may be a passive investor and may hold a small portion of the corporation, but may have more personal wealth than many of the other shareholders. Such a shareholder is well-advised to keep a close eye on the corporation's business and finances because even a passive investor could be fully liable without regard to percentage of ownership.

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1. In general

Section 71 of former Stock Corp. L., from which this section of the Bus. Corp. L. is said to have been "derived," was dissimilar in a number of respects, most notably in its application to all stockholders and regardless of whether the corporation's shares were listed on a recognized securities exchange. Section 71 was inapplicable to foreign corporations, and their shareholders were not personally liable for amounts due employees thereunder, even though the corporation did business in New York and the contract was entered into and the services rendered in New York. Armstrong v Dyer, 268 N.Y. 671, 198 N.E. 551, 268 N.Y. (N.Y.S.) 671, 1935 N.Y. LEXIS 1141 (N.Y. 1935); Spector v Brandriss, 54 N.Y.S.2d 527, 184 Misc. 40, 1933 N.Y. Misc. LEXIS 951 (N.Y. App. Term 1933); Gonzales v Tuttman, 59 F. Supp. 858, 1945 U.S. Dist. LEXIS 2471 (D.N.Y. 1945); Bogardus v Fitzpatrick, 247 N.Y.S. 692, 139 Misc. 533, 1931 N.Y. Misc. LEXIS 1068 (N.Y. Sup. Ct. 1931).

Business Corporation § 630 is not pre-empted by Employee Retirement Income Security Act (29 USCS § 1144) on grounds that it impermissibly regulates terms and conditions of employee benefit plans; trustees of welfare and pension plan may seek recovery of payments which corporation failed to contribute to welfare and pension plan from shareholders of corporation pursuant to Business Corporation § 630. Sasso v Vachris, 66 N.Y.2d 28, 494 N.Y.S.2d 856, 484 N.E.2d 1359, 1985 N.Y. LEXIS 16996 (N.Y. 1985).

A proceeding against a principal stockholder of a corporation to require him to pay a judgment obtained against the corporation pursuant to § 71 of the Stock Corporation Law could only, after effective date of this law (September 1, 1963) be commenced and carried forward under this section of the Business Corporation Law and within the 90-day period prescribed herein. Tessler v Suskind, 42 Misc. 2d 27, 247 N.Y.S.2d 537, 1964 N.Y. Misc. LEXIS 2003 (N.Y. Dist. Ct. 1964).

Statute permitting employees to bring action for wages or salaries due and owing for services performed for corporation in which defendants hold stock does not require termination of employment relationship as condition precedent to bringing action thereunder. Grossman v Sendor, 89 Misc. 2d 952, 392 N.Y.S.2d 997, 1977 N.Y. Misc. LEXIS 2726 (N.Y. Sup. Ct. 1977), modified, 64 A.D.2d 561, 407 N.Y.S.2d 22, 1978 N.Y. App. Div. LEXIS 12312 (N.Y. App. Div. 1st Dep't 1978).

Action brought under CLS Bus Corp § 630 is not renewed determination on merits but constitutes enforcement mechanism to protect employees of closely held corporation, so that large shareholder may not collaterally attack judgment for which there was full opportunity to litigate. Matarazzo v Segall, 153 Misc. 2d 176, 580 N.Y.S.2d 644, 1992 N.Y. Misc. LEXIS 31 (N.Y. Civ. Ct. 1992), rev'd, 156 Misc. 2d 1, 600 N.Y.S.2d 890, 1993 N.Y. Misc. LEXIS 263 (N.Y. App. Term 1993).

But former Stk Corp § 71 was considered penal in nature and to be strictly construed. Kabaker v Gelb, 52 N.Y.S.2d 678, 1941 N.Y. Misc. LEXIS 2661 (N.Y. City Ct. 1941); Harris v Lederfine, 92 N.Y.S.2d 645, 196 Misc. 410, 1949 N.Y. Misc. LEXIS 2871 (N.Y. Sup. Ct. 1949); Burns v Stento, 9 N.Y.S.2d 736, 1939 N.Y. Misc. LEXIS 1485 (N.Y. County Ct. 1939).

CLS Bus Corp § 630, providing that in certain cases obligation to make contributions to employee benefit funds could be enforced against 10 largest corporate shareholders, made explicit reference to ERISA plans and significantly affected ERISA plans, and thus related to ERISA plans and was preempted by ERISA; although statute did not specifically reference ERISA plans, references to insurance or welfare benefits and pension or annuity funds that were supported by employer contributions described with sufficient specificity welfare benefit plans regulated under ERISA and, by changing remedies, statute would alter incentives for employers to create and maintain ERISA plans. Romney v Lin, 94 F.3d 74, 1996 U.S. App. LEXIS 22017 (2d Cir. N.Y. 1996), reh'g denied, 105 F.3d 806, 1997 U.S. App. LEXIS 1044 (2d Cir. 1997), cert. denied, 522 U.S. 906, 118 S. Ct. 263, 139 L. Ed. 2d 189, 1997 U.S. LEXIS 6000 (U.S. 1997).

CLS Bus Corp § 630, providing that in certain cases obligation to make contributions to employee benefit funds could be enforced against 10 largest corporate shareholders, did not serve basic purpose of ERISA preemption (namely, to avoid multiplicity of regulation in order to permit nationally uniform administration of employee benefits) and thus was preempted by ERISA, as it provided alternative enforcement mechanism to ERISA. Romney v Lin, 94 F.3d 74, 1996 U.S. App. LEXIS 22017 (2d Cir. N.Y. 1996), reh'g denied, 105 F.3d 806, 1997 U.S. App. LEXIS 1044 (2d Cir. 1997), cert. denied, 522 U.S. 906, 118 S. Ct. 263, 139 L. Ed. 2d 189, 1997 U.S. LEXIS 6000 (U.S. 1997).

Union’s claim under CLS Bus Corp § 630 for recovery of arbitration award was not preempted by federal Labor Management Relations Act § 301, and thus majority shareholders who were held liable for award in state court action were not entitled to judgment declaring such preemption, since § 630 requires that action may be commenced only after there has been adjudication of amount due and owing, judgment and rights created by collective-bargaining agreements (CBAs) were determined by arbitrators prior to action under § 630, and court in § 630 action would therefore not be required to interpret CBAs. Albradco, Inc. v Bevona, 982 F.2d 82, 1992 U.S. App. LEXIS 33436 (2d Cir. N.Y. 1992).

CLS Bus Corp § 630 (which provides that 10 largest shareholders of corporation are jointly and severally liable for debts owing to employees, including amounts owed to employee benefit funds) is not preempted by Labor Management Relations Act. Romney v Lin, 894 F. Supp. 163, 1995 U.S. Dist. LEXIS 12323 (S.D.N.Y. 1995), aff'd, 94 F.3d 74, 1996 U.S. App. LEXIS 22017 (2d Cir. N.Y. 1996).

Employee Retirement Income Security Act (ERISA) preempts CLS Bus Corp § 630 (which provides that 10 largest shareholders of corporation are jointly and severally liable for debts owing to employees, including amounts owed to employee

benefit funds), since question of whether shareholders of corporate employer are to be held liable for unpaid contributions to benefit fund has "connection" to benefit fund, and § 630 contradicts ERISA (which does not authorize any action against officers and stockholders of corporate employer to recover contributions owed to ERISA fund). Romney v Lin, 894 F. Supp. 163, 1995 U.S. Dist. LEXIS 12323 (S.D.N.Y. 1995), aff'd, 94 F.3d 74, 1996 U.S. App. LEXIS 22017 (2d Cir. N.Y. 1996).

2. Purpose

The phrasing and purpose of § 71 of former Stock Corp. L. were regarded as excluding stockholder liability for amounts due to a major stockholder, principal contributor, director, or principal executive, even though the claim was asserted as one for services rendered. Askowith v Carlton, 249 N.Y. 579, 164 N.E. 590, 249 N.Y. (N.Y.S.) 579, 1928 N.Y. LEXIS 929 (N.Y. 1928); Kabaker v Gelb, 52 N.Y.S.2d 678, 1941 N.Y. Misc. LEXIS 2661 (N.Y. City Ct. 1941); Harris v Lederfine, 92 N.Y.S.2d 645, 196 Misc. 410, 1949 N.Y. Misc. LEXIS 2871 (N.Y. Sup. Ct. 1949).

Defendants, the income beneficiaries and remaindermen of a trust which was comprised of the preferred stock in a corporation, would be deemed shareholders for the purposes of Bus Corp Law § 630 and therefore would be jointly and severably liable for the payment of wages due the corporation's employees in the form of fringe benefit contributions, since by specifying in the statute that the ten largest shareholders are to be determined by valuing their "beneficial interests" in the corporation, the legislature made clear its intention not to make a fiduciary holding legal title personally liable therein, but to make the equitable owners of the stock responsible for the payment of employee wage claims. Sasso v Gallucci, 112 Misc. 2d 865, 447 N.Y.S.2d 618, 1982 N.Y. Misc. LEXIS 3206 (N.Y. Sup. Ct. 1982).

Section 71 of former Stock Corp. L. had for its purpose the protection of all classes of labor beneath the grade of a vice-principal or a direct representative of the employer. Kabaker v Gelb, 52 N.Y.S.2d 678, 1941 N.Y. Misc. LEXIS 2661 (N.Y. City Ct. 1941).

Purpose of Business Corporation Law § 630 is to safeguard those protected by it from being left without recourse for payment of wages and salaries due in case of insolvency of corporation within meaning of statute; this purpose would be significantly undermined by requiring member of protected class to pursue those responsible for payment of wages and salaries in remote jurisdiction and, thus, defendants' ownership of shares in New York corporation allegedly subject to terms and conditions of § 630 is purposeful activity from which instant cause of action arises which satisfies requirements of transaction of business in New York for actions brought against nondomiciliary under CPLR § 302(a)(1). Kane v Benson, 86 F.R.D. 460, 1980 U.S. Dist. LEXIS 11065 (E.D.N.Y. 1980).

3. Applicability

An action relating to the recovery of a deposit made by the plaintiff with the corporation as a guaranty of the faithful performance of his duties, was not one brought to recover a debt for services performed. Bradigan v Bayliss, 255 A.D. 934, 8 N.Y.S.2d 756, 1938 N.Y. App. Div. LEXIS 5894 (N.Y. App. Div. 1938).

Claim, that two individual majority stockholders, who owned more than majority of shares of corporate majority stockholder, conspired to depress profits of bankrupt corporation and to increase profits of corporate majority stockholder and that the two individual majority stockholders wasted assets of bankrupt corporation to benefit of corporate majority stockholder, belonged to the bankrupt corporation rather than to stockholders and should have been brought as a derivative suit. Carpenter v Sisti, 45 A.D.2d 529, 360 N.Y.S.2d 13, 1974 N.Y. App. Div. LEXIS 3841 (N.Y. App. Div. 1st Dep't 1974).

CLS Bus Corp § 630(a) applied, and thus defendants' motion to dismiss complaint was properly denied, where plaintiffs sought compensation for labor and services performed before subject New York corporation merged with foreign corporation, and merger did not extinguish defendants' liability for that compensation. La Vigne v Feinbloom, 255 A.D.2d 896, 680 N.Y.S.2d 348, 1998 N.Y. App. Div. LEXIS 12086 (N.Y. App. Div. 4th Dep't 1998).

An action by trustees of a union welfare fund under Bus Corp Law § 630 to hold officers and shareholders of a bankrupt corporation liable for the corporation's failure to pay contributions to the welfare fund on behalf of union employees as required by the terms of a collective bargaining agreement would be dismissed, since the subject employee benefit plan falls

within the purview of federal law (ERISA) which nearly totally preempts regulation of employee benefit plans and which grants federal courts exclusive jurisdiction of such an action. Sasso v Vachris, 116 Misc. 2d 797, 456 N.Y.S.2d 629, 1982 N.Y. Misc. LEXIS 3961 (N.Y. Sup. Ct. 1982), modified, 106 A.D.2d 132, 482 N.Y.S.2d 875, 1984 N.Y. App. Div. LEXIS 21307 (N.Y. App. Div. 2d Dep't 1984).

Because the use of the term "corporation" in N.Y. Bus. Corp. Law § 630 was plainly limited to domestic corporations, and because the corporation in question was a defunct Delaware corporation, the shareholders' motion to dismiss an employee's claims brought pursuant to that statute had to be granted. Stuto v Kerber, 888 N.Y.S.2d 872, 26 Misc. 3d 535, 2009 N.Y. Misc. LEXIS 3077 (N.Y. Sup. Ct. 2009), aff'd, 77 A.D.3d 1233, 910 N.Y.S.2d 215, 2010 N.Y. App. Div. LEXIS 7726 (N.Y. App. Div. 3d Dep't 2010).

District Court will not exercise ancillary jurisdiction over law firm's attorney's fees claims against individual shareholders of corporate employer which firm represented in underlying wage and hour cause of action, where judgment has not been entered in underlying wage and hour action against corporate employer, because, under CLS Bus Corp Law § 630, personal liability of 10 largest shareholders is not only contingent upon judgment against corporation for employee compensation but is subject of separate action commenced within 90 days of judgment against corporation. Wong v East River Chinese Restaurant, 884 F. Supp. 663, 1995 U.S. Dist. LEXIS 5211 (E.D.N.Y. 1995).

Action to collect money owed to union benefit funds is dismissed, where employer failed to pay funds, judgment was obtained, and amount owed is now sought from principal shareholder of employer, because statute authorizing such collection action against "ten largest shareholders of every corporation," CLS Bus Corp Law § 630, is preempted by ERISA (29 USCS §§ 1001 et seq.) as state law relating to employee benefit plan. Romney v Lin, 894 F. Supp. 163, 1995 U.S. Dist. LEXIS 12323 (S.D.N.Y. 1995), aff'd, 94 F.3d 74, 1996 U.S. App. LEXIS 22017 (2d Cir. N.Y. 1996).

4. "Employee"

An attorney at law was not deemed to be in the "employee" class, notwithstanding he was regularly employed. Bristor v Smith, 158 N.Y. 157, 53 N.E. 42, 158 N.Y. (N.Y.S.) 157, 1899 N.Y. LEXIS 660 (N.Y. 1899).

The plaintiffs, whose principal duties were to travel around the country instructing the purchasers of annealing furnaces in the method of their operation, necessitating the actual operation of furnaces, making research tests and doing stenographic and typing work, for which they received meagre salaries in keeping with such positions, were "employees" within the meaning of § 71 of former Stock Corp. L. Evans v Lawrence Stern & Co., 270 N.Y. 177, 200 N.E. 777, 270 N.Y. (N.Y.S.) 177, 1936 N.Y. LEXIS 1529 (N.Y. 1936).

The word "employee" included a bookkeeper employed at a weekly salary who, in addition to the usual duties of such position, attended to the banking business of the corporation and answered inquiries in the absence of officers. It seems, that such an employee is within the terms of the statute although he receives an annual salary. Farnum v Harrison, 167 A.D. 704, 152 N.Y.S. 835, 1915 N.Y. App. Div. LEXIS 7450 (N.Y. App. Div. 1915), aff'd, 218 N.Y. 672, 113 N.E. 1055, 218 N.Y. (N.Y.S.) 672, 1916 N.Y. LEXIS 1171 (N.Y. 1916).

A salesman employed by corporation and at all times subject to the direction and control of his employer, which is entitled to command his entire time and attention, was an "employee" and within the protection of § 71 of former Stock Corp. L., though he was paid commission on accepted sales. Hitchcock v Pagenstecher, 198 A.D. 511, 190 N.Y.S. 706, 1921 N.Y. App. Div. LEXIS 8131 (N.Y. App. Div. 1921).

Despite what plaintiff described as his "fancy title" of "Sr. Vice-President—Sales," he stated cause of action for recovery of unpaid wages as "employee" under CLS Bus Corp § 630 where he alleged that he had no supervisory responsibilities over other employees, no authority to make spending decisions, no check writing privileges, and no financial interest in corporation, that his sole responsibility was to sell finished products, and that all of his contracts were subject to approval of corporation's president. Moses v Polk, 251 A.D.2d 75, 673 N.Y.S.2d 678, 1998 N.Y. App. Div. LEXIS 6508 (N.Y. App. Div. 1st Dep't 1998).

Court erred in granting defendants' summary judgment motion in action under CLS Bus Corp § 630 on ground that plaintiff lacked standing inasmuch as he was attorney and not "employee" within meaning of statute since plaintiff was full-time salaried employee of corporation, who throughout his employment was under direction and control of corporation's managers and officers. Klepner v Dorfman, 256 A.D.2d 163, 681 N.Y.S.2d 532, 1998 N.Y. App. Div. LEXIS 13739 (N.Y. App. Div. 1st Dep't 1998).

Plaintiff whose claim against largest stockholders of insolvent corporation for sums due him from corporation was an integral part of buy-out agreement under which plaintiff sold his shares to corporation and received cash plus a noncancelable ten-year contract for a guaranteed salary of $1,000 per month was not an "employee" within meaning of statute making ten largest stockholders of certain corporations which become insolvent liable for debts, wages and salaries of laborers, servants and employees of corporation. Herman v Levanne, 77 Misc. 2d 653, 354 N.Y.S.2d 361, 1974 N.Y. Misc. LEXIS 1208 (N.Y. Dist. Ct.), aff'd, 79 Misc. 2d 799, 363 N.Y.S.2d 323, 1974 N.Y. Misc. LEXIS 1752 (N.Y. App. Term 1974).

The word "laborer" was considered to have the same connotation as the word "workman" as used in § 17 of the Bankruptcy Act, giving certain claims priority status in bankruptcy proceedings. In re Fabbri, 8 F. Supp. 35, 1934 U.S. Dist. LEXIS 1282 (D.N.Y. 1934).

5. "Wages" and other terms

Employer contributions for welfare benefits and two pension funds are expressly included as wages and salaries, and action may be taken against shareholders for unpaid contributions to pension trust funds. Sasso v Vachris, 66 N.Y.2d 28, 494 N.Y.S.2d 856, 484 N.E.2d 1359, 1985 N.Y. LEXIS 16996 (N.Y. 1985).

Although § 71 of former Stock Corp. L. was less specific than this section of the Bus. Corp. L. with respect to what constituted "wages" and "salaries" as including special pay and "fringe benefits," it was construed as permitting trustees of a Union Health and Welfare Fund to impose personal liability on stockholders where the corporation failed to pay contributions to the fund as required by a collective bargaining agreement. Greenberg v Corwin, 31 Misc. 2d 736, 222 N.Y.S.2d 80, 1961 N.Y. Misc. LEXIS 2138 (N.Y. Sup. Ct. 1961).

See also Corenti v Kulik, 36 Misc. 2d 996, 234 N.Y.S.2d 28, 1962 N.Y. Misc. LEXIS 2799 (N.Y. Sup. Ct. 1962).

While contributions to welfare and pension plans may not qualify as "wages" for purpose of determining priority of claims in bankruptcy, they do qualify as "wages" for purpose of statute permitting employees to bring action for wages or salaries due and owing for services performed for corporation in which defendants hold stock, and union has standing to bring action under that statute. Grossman v Sendor, 89 Misc. 2d 952, 392 N.Y.S.2d 997, 1977 N.Y. Misc. LEXIS 2726 (N.Y. Sup. Ct. 1977), modified, 64 A.D.2d 561, 407 N.Y.S.2d 22, 1978 N.Y. App. Div. LEXIS 12312 (N.Y. App. Div. 1st Dep't 1978).

Use of word "such" in statute permitting employees to bring action for wages or salaries due and owing for services performed for corporation in which defendants hold stock and requiring that notice be given stockholders within 90 days after termination of "such services" indicates that "services" referred to are those which have already been "performed" and for which wages are "due and owing"; thus prospective relationship of employer and employee is not material, since statute makes stockholders liable only for services which have already been completed and not for those which will be completed at some point in future; "termination" therefore refers to services, not to employment relationship. Grossman v Sendor, 89 Misc. 2d 952, 392 N.Y.S.2d 997, 1977 N.Y. Misc. LEXIS 2726 (N.Y. Sup. Ct. 1977), modified, 64 A.D.2d 561, 407 N.Y.S.2d 22, 1978 N.Y. App. Div. LEXIS 12312 (N.Y. App. Div. 1st Dep't 1978).

Section 71 of former Stock Corp. L. required the notice of intention to enforce stockholder liability to be given within a specified time after "termination of employment," and these words were given their usual and ordinary meaning, "termination" being broad enough to include either voluntary quitting or involuntary discharge. Burns v Stento, 9 N.Y.S.2d 736, 1939 N.Y. Misc. LEXIS 1485 (N.Y. County Ct. 1939).

6. Notice, generally

Section 71 of former Stock Corp. L. likewise contained time limitations within which notice of intention to enforce stockholder liability must be given, and within which an action to enforce such liability must be brought. Failure to meet these limitations was ground for dismissal of the action. Denise v Welch, 242 A.D. 34, 273 N.Y.S. 921, 1934 N.Y. App. Div. LEXIS 5987 (N.Y. App. Div. 1934).

If the notice was actually received within the prescribed time by the stockholder to whom it was directed, the service was good and valid, even though the service was by mail; the manner of service was of no great importance. Horowitz v Winter, 222 N.Y.S. 233, 129 Misc. 814, 1927 N.Y. Misc. LEXIS 793 (N.Y. Mun. Ct. 1927).

Section 71 of former Stock Corp. L., like this section of the Bus. Corp. L., contained a preliminary notice requirement which was a condition precedent to right to enforce stockholder liability. The purpose of the requirement was to give the stockholder notified a chance to take measures to compel payment of the wage demand by the corporation, or others in interest, before being sued and actually subjected to personal liability. Horowitz v Winter, 222 N.Y.S. 233, 129 Misc. 814, 1927 N.Y. Misc. LEXIS 793 (N.Y. Mun. Ct. 1927).

Section 71 of former Stock Corp. L. required the notice of intention to enforce stockholder liability to be given within a specified time after "termination of employment," and these words were given their usual and ordinary meaning, "termination" being broad enough to include either voluntary quitting or involuntary discharge. Burns v Stento, 9 N.Y.S.2d 736, 1939 N.Y. Misc. LEXIS 1485 (N.Y. County Ct. 1939).

7. —Particular cases

Corporation allegedly terminated services of one of its employees, plaintiff, at time when it was allegedly indebted to plaintiff for past-due wages and salary in amount in excess of $50,000; plaintiff's negotiations with corporation culminated in settlement and following one payment, corporation apparently failed to continue payments to plaintiff; corporation thereafter filed for reorganization and plaintiff gave notice to defendant, one of 10 largest shareholders of corporation, of his intent to hold defendant liable pursuant to Business Corporation Law § 630 for amount corporation owed him for services rendered–while Business Corporation Law § 630 provides that 10 largest shareholders shall jointly and severally be personally liable for debts owing to its employees for services rendered, such liability is conditioned on explicit statutory directive that notice of intent to hold shareholder liable shall be given within 180 days after termination of services; plaintiff's notice of intent is dated May 21, 1986 and states that plaintiff's services were terminated on April 5, 1985; notice thus failed to satisfy 180-day limitation period; accordingly, complaint was properly dismissed–plaintiff's equitable estoppel argument is rejected; there is no proof that defendant, by resort to settlement negotiations, intended to lull plaintiff into refraining from giving timely notice of intent within 180 days of termination; in any event, settlement negotiations did not involve defendant, which therefore cannot be bound by any equitable estoppel assertable against corporation. Beam v Key Venture Capital Corp., 152 A.D.2d 825, 544 N.Y.S.2d 35, 1989 N.Y. App. Div. LEXIS 9416 (N.Y. App. Div. 3d Dep't 1989).

Where payments corporation was required to make to union's welfare, pension and special displacement benefit trust funds, calculated as percentage of gross earnings of employees, were "due and owing" only at end of each month, in order to hold stockholders of corporation, which filed petition in bankruptcy, liable for payment due May 31, June 30, and July 31, only one notice need be served within 90 days after termination of such services. Grossman v Sendor, 64 A.D.2d 561, 407 N.Y.S.2d 22, 1978 N.Y. App. Div. LEXIS 12312 (N.Y. App. Div. 1st Dep't 1978).

Terminated employee was not entitled to hold large shareholder of employer company liable for amount owed him for services rendered to company, pursuant to CLS Bus Corp § 630, where employee was terminated in April 1985 but did not send notice of intent to hold shareholder liable until May 1986, and thus failed to satisfy 180-day limitation set forth in § 630(a); employee's argument that settlement with employer made in November 1985 led him to believe suit would not be necessary was without merit where there was no evidence that employer intended to lull employee into failing to give timely notice of intent. Beam v Key Venture Capital Corp., 152 A.D.2d 825, 544 N.Y.S.2d 35, 1989 N.Y. App. Div. LEXIS 9416 (N.Y. App. Div. 3d Dep't 1989).

Labor union, in order to comply with 180-day notice requirement of CLS Bus Corp § 630(a), had to serve notice of intent on shareholder by February 1, 1991 for first period and by September 21, 1991 for second period, since unpaid services in

question (contributions to union welfare fund) were performed between November 1, 1989 and August 1, 1990, and between October 1, 1990 and March 21, 1991; plaintiff's failure to serve notice until May 16, 1992 required dismissal of action. Gannone v Wittman, 232 A.D.2d 298, 649 N.Y.S.2d 14, 1996 N.Y. App. Div. LEXIS 10518 (N.Y. App. Div. 1st Dep't 1996).

Because an employee who sought to recover unpaid wages from a former employer's sole shareholder did not retain counsel until after this section's notice period had expired, at which time an action against the shareholder was precluded, a legal malpractice complaint failed to state a claim. The notice period began to run upon cessation of services, regardless of when the employment relationship was deemed to have ended under federal law for visa status purposes, and tolling was unavailable. Ingvarsdottir v Gaines, Gruner, Ponzini & Novick, LLP, 144 A.D.3d 1099, 43 N.Y.S.3d 68, 2016 N.Y. App. Div. LEXIS 7898 (N.Y. App. Div. 2d Dep't 2016).

Notice of intention to hold corporation stockholders liable given by registered mail was sufficient notice within meaning of § 71 of former Stock Corp. L., where the proof showed receipt of the notice within thirty days after termination of plaintiff's services and within thirty days after return unsatisfied of execution in an action in which judgment was recovered against corporation for said services. Horowitz v Winter, 222 N.Y.S. 233, 129 Misc. 814, 1927 N.Y. Misc. LEXIS 793 (N.Y. Mun. Ct. 1927).

The requirement that notice of intention to hold a stockholder liable for unpaid wages be given within 30 days after termination of services was not met by the trustees of a union insurance fund where the corporation had gone into bankruptcy and all services by employees had ceased long before notice of intention to enforce stockholder liability was given. Corenti v Kulik, 36 Misc. 2d 996, 234 N.Y.S.2d 28, 1962 N.Y. Misc. LEXIS 2799 (N.Y. Sup. Ct. 1962).

The fact that employees in a petition and verified proof of claim in a bankruptcy proceeding fixed the date of termination of their services as a date more than 30 days prior to service of notice on the stockholders did not estop such employees from proving a different date in an action against the stockholders for wages. Burns v Stento, 9 N.Y.S.2d 736, 1939 N.Y. Misc. LEXIS 1485 (N.Y. County Ct. 1939).

8. Execution unsatisfied

The judgment obtained against the corporation did not have to be a judgment of a court of record, and neither did the execution issued and returned unsatisfied have to issue out of a court of record. Padros v Swarzenbach, 134 A.D. 811, 119 N.Y.S. 589, 1909 N.Y. App. Div. LEXIS 2990 (N.Y. App. Div. 1909).

Claim that there was no execution returned unsatisfied against bankrupt corporation prior to payment by majority stockholders of employees' wage claims, and claim, that two individual majority stockholders, who owned more than majority of shares of corporate majority stockholder, conspired to depress profits of bankrupt corporation and to increase profits of corporate stockholder and that the individual majority stockholders wasted assets of bankrupt corporation to benefit of corporate majority stockholder, was valid affirmative defense to allegation that majority shareholders paid more than their pro rata share of wages owned to employees of bankrupt corporation and that they were entitled to contribution from minority shareholders. Carpenter v Sisti, 45 A.D.2d 529, 360 N.Y.S.2d 13, 1974 N.Y. App. Div. LEXIS 3841 (N.Y. App. Div. 1st Dep't 1974).

In an action by a union against a corporation for payment of specified funds in which defendant corporate president served a crossclaim on defendant corporate vice-president alleging that liability of the individual defendants flowed from Bus Corp Law § 630 and Labor Law § 198-c and that the president was entitled to recoup from the vice-president as vice-president and largest shareholder his pro rata share of the amount paid by the president in satisfaction of the union's claim, summary judgment dismissing the crosscomplaint was proper since Bus Corp Law § 630 requires as a condition precedent to an action against shareholders that judgment be recovered against the corporation and that execution on such judgment be returned unsatisfied, and the proof showed that the president settled the claim by payment of $55,000, that the corporation was still operating, that the president was still its president, and that the vice-president, employed as plant superintendent without executive authority, did not fall within the categories of corporate officer as specified in Labor Law § 198-c. Powers v Adcraft Typographers, Inc., 86 A.D.2d 566, 446 N.Y.S.2d 292, 1982 N.Y. App. Div. LEXIS 15089 (N.Y. App. Div. 1st Dep't), app. denied, 56 N.Y.2d 505, 1982 N.Y. LEXIS 5366 (N.Y. 1982).

Before suing stockholders to enforce their individual liability, under § 71 of former Stock Corp. L., as construed with § 73 of that Law, the claimant must first have brought an action against the corporation, obtained judgment against it, and had execution issued thereon returned unsatisfied. Arenwald v Douglas Machinery Co., 50 N.Y.S.2d 39, 183 Misc. 627, 1944 N.Y. Misc. LEXIS 2260 (N.Y. Sup. Ct. 1944).

In reference to statute providing that action by employees against stockholders of corporate employer shall be commenced within 90 days after return of execution unsatisfied against corporation upon judgment recovered against it for services rendered, fact that plaintiff union was stayed from commencing any action against corporation, which employed members of union, to recover unpaid balance owed union's welfare, pension and special displacement benefit trust funds once corporation filed petition in bankruptcy did not make it impossible to collect full amount in bankruptcy proceedings, although that was unlikely, and as long as it was theoretically possible to collect debt from corporation, stockholders were not liable, for purpose of statute was to create exception to rule of limited liability only where employees could not collect their wages because of insolvency of corporation. Grossman v Sendor, 89 Misc. 2d 952, 392 N.Y.S.2d 997, 1977 N.Y. Misc. LEXIS 2726 (N.Y. Sup. Ct. 1977), modified, 64 A.D.2d 561, 407 N.Y.S.2d 22, 1978 N.Y. App. Div. LEXIS 12312 (N.Y. App. Div. 1st Dep't 1978).

In an action brought by trustees of union welfare and pension trust funds against sole stockholder and alleged corporate officers for fringe benefits due from corporate employer, summary judgment in favor of union trustees would be granted since plaintiffs were not required to wait for the return of an unsatisfied execution of judgment against the corporation when plaintiffs were prevented from proceeding against the corporate employer by an automatic stay of the bankruptcy law and where plaintiffs' established a prima facie case pursuant to Bus Corp Law § 630 for fringe benefits due and a prima facie case under Labor Law § 198-c for failure to remit the requisite payments to the welfare and pension trust funds. Sasso v Millbrook Enterprises, Inc., 108 Misc. 2d 562, 438 N.Y.S.2d 59, 1981 N.Y. Misc. LEXIS 2240 (N.Y. Sup. Ct. 1981).

9. Parties; subrogation

A wage claimant or other creditor within the coverage of § 71 of former Stock Corp. L. could proceed individually or in behalf of himself and other such claimants, and could maintain an action to enforce stockholder liability against all, part, or any one of the stockholders with respect to whom he had met the preliminary requirements. Pfohl v Simpson, 74 N.Y. 137, 74 N.Y. (N.Y.S.) 137, 1878 N.Y. LEXIS 719 (N.Y. 1878); Citizens' Bank of Buffalo v Weinberg, 57 N.Y.S. 495, 26 Misc. 518, 1899 N.Y. Misc. LEXIS 1295 (N.Y. Sup. Ct. 1899); Horowitz v Winter, 222 N.Y.S. 233, 129 Misc. 814, 1927 N.Y. Misc. LEXIS 793 (N.Y. Mun. Ct. 1927).

Plaintiff, as head of union which had negotiated collective bargaining agreements with defendant, which operated through 2 alter ego corporations, had standing to bring action under CLS Bus Corp § 630 for recovery of wage differentials and unpaid union pension and health funds contributions, even in absence of former employees. Bevona v Albradco, Inc., 173 A.D.2d 419, 570 N.Y.S.2d 47, 1991 N.Y. App. Div. LEXIS 7724 (N.Y. App. Div. 1st Dep't 1991).

Court erred in granting defendants' summary judgment motion in action under CLS Bus Corp § 630 on ground that plaintiff lacked standing inasmuch as he was attorney and not "employee" within meaning of statute since plaintiff was full-time salaried employee of corporation, who throughout his employment was under direction and control of corporation's managers and officers. Klepner v Dorfman, 256 A.D.2d 163, 681 N.Y.S.2d 532, 1998 N.Y. App. Div. LEXIS 13739 (N.Y. App. Div. 1st Dep't 1998).

An action pursuant to § 71 of former Stock Corp. L. could not succeed against an individual defendant if he had ceased to be a stockholder long prior to its commencement. Murphy v Meyer, 280 N.Y.S. 550, 155 Misc. 753, 1935 N.Y. Misc. LEXIS 1246 (N.Y. City Ct. 1935).

Although debtor-in-possession is new legal entity distinct from debtor and is therefore a "new" employer for bankruptcy purposes, the actual employment of the debtor's workers may be continued and such continuation does not preclude an action against the debtor's shareholders to recover wages, salaries or pension benefits due the debtor's employees. Grossman v Sendor, 89 Misc. 2d 952, 392 N.Y.S.2d 997, 1977 N.Y. Misc. LEXIS 2726 (N.Y. Sup. Ct. 1977), modified, 64 A.D.2d 561, 407 N.Y.S.2d 22, 1978 N.Y. App. Div. LEXIS 12312 (N.Y. App. Div. 1st Dep't 1978).

A stockholder was not subrogated to employee's wage claims where she advanced money to a bankrupt corporation to pay wage claims of the corporation's employees before her liability under § 71 of former Stock Corp. L. had arisen. Lacks v Frummer, 242 F.2d 216, 1957 U.S. App. LEXIS 4300 (2d Cir. N.Y. 1957).

10. Timeliness of action

Plaintiffs' CLS Bus Corp § 630 claims were properly dismissed since they were not interposed within 90 days of return of unsatisfied execution as required by CLS Bus Corp § 630(a), and claims could not be saved through application of CLS CPLR §§ 205(a) or former 306-b. Wing Wong v King Sun Yee, 262 A.D.2d 254, 693 N.Y.S.2d 536, 1999 N.Y. App. Div. LEXIS 7747 (N.Y. App. Div. 1st Dep't 1999).

Action, brought against stockholders of corporation which employed members of plaintiff union after corporation filed petition in bankruptcy, to recover unpaid balance owed plaintiff's welfare, pension and special displacement benefit trust funds, payments to which were calculated as percentage of gross earnings of employees, was timely where commenced within 90 days of bankruptcy confirmation order, as opposed to date of filing of bankruptcy petition. Grossman v Sendor, 89 Misc. 2d 952, 392 N.Y.S.2d 997, 1977 N.Y. Misc. LEXIS 2726 (N.Y. Sup. Ct. 1977), modified, 64 A.D.2d 561, 407 N.Y.S.2d 22, 1978 N.Y. App. Div. LEXIS 12312 (N.Y. App. Div. 1st Dep't 1978).

Service of summons upon one stockholder within the time limited for institution of the action was considered sufficient to meet that limitation with respect to all stockholders. Ryan v Dash, 114 N.Y.S.2d 36, 1952 N.Y. Misc. LEXIS 2842 (N.Y. Sup. Ct. 1952).

11. Jurisdiction

Although the State Supreme Court had jurisdiction over a cause of action based on Bus Corp Law § 630, in which plaintiffs, trustees of an employees' welfare and pension fund, sought to hold defendant shareholders liable for contributions which should have been made to the fund, such cause of action would not be maintainable in State Court, since the broad plain language of the Federal Employee Retirement Income Security Act (ERISA) applies to supersede § 630 insofar as the latter relates to employee benefit plans covered by the Federal statute, notwithstanding the fact that the State statute neither conflicts with nor frustrates the general objectives of ERISA; insofar as § 630 "relates to" employee benefit plans by providing a potential enforcement mechanism not encountered in ERISA for plans governed by ERISA, it falls within the Federal preemption statute. Sasso v Vachris, 106 A.D.2d 132, 482 N.Y.S.2d 875, 1984 N.Y. App. Div. LEXIS 21307 (N.Y. App. Div. 2d Dep't 1984), rev'd, 66 N.Y.2d 28, 494 N.Y.S.2d 856, 484 N.E.2d 1359, 1985 N.Y. LEXIS 16996 (N.Y. 1985).

Since the liability of stockholders to employees was quasi-contractual in nature, the municipal court of New York City had jurisdiction of an action by an employee under § 71 of former Stock Corp. L. Halkin v Hume, 206 N.Y.S. 702, 123 Misc. 815, 1924 N.Y. Misc. LEXIS 1251 (N.Y. Mun. Ct. 1924); Horowitz v Winter, 222 N.Y.S. 233, 129 Misc. 814, 1927 N.Y. Misc. LEXIS 793 (N.Y. Mun. Ct. 1927).

Purchase of 10,000 shares of a New York corporation by New York residents, coupled with knowledge of and participation in the operation of the corporation, was "purposeful activity" within long-arm statute, especially when the stock purchase constituted the purchasers, as joint tenants, the largest shareholders in the corporation, and third-party cause of action against the purchasers for pro rata payment of liability imposed on the ten largest shareholders for unpaid wages earned by employee of the corporation arose from business transacted within the state, so that there was personal jurisdiction over the purchasers, who had moved to Indiana, in the third-party action. Havlicek v Bach, 86 Misc. 2d 1084, 385 N.Y.S.2d 750, 1976 N.Y. Misc. LEXIS 2587 (N.Y. Sup. Ct. 1976).

Labor union's state law cause of action against employer's principal shareholder to collect delinquent contributions to ERISA plans (which was preempted by ERISA) fell within scope of ERISA's civil enforcement provisions, and thus was properly removed to federal court; ERISA provides means for collecting delinquent ERISA contributions without imposing direct liability on shareholders such that permitting suits against shareholders pursuant to CLS Bus Corp § 630 would reallocate burden and benefits for class of New York corporations establishing ERISA plans and would afford those plans special and

stringent means of civil enforcement. Romney v Lin, 94 F.3d 74, 1996 U.S. App. LEXIS 22017 (2d Cir. N.Y. 1996), reh'g denied, 105 F.3d 806, 1997 U.S. App. LEXIS 1044 (2d Cir. 1997), cert. denied, 522 U.S. 906, 118 S. Ct. 263, 139 L. Ed. 2d 189, 1997 U.S. LEXIS 6000 (U.S. 1997).

12. Miscellaneous

A stockholder could not be charged with costs incurred in the defense of an action prosecuted against the corporation for damages upon causes of action other than that embraced in the statute making him liable. Card v Groesbeck, 204 N.Y. 301, 97 N.E. 728, 204 N.Y. (N.Y.S.) 301, 1912 N.Y. LEXIS 768 (N.Y. 1912).

Action to recover damages for unpaid wages, brought under CLS Bus Corp § 630 against respondents in their alleged capacity as 2 of 10 largest shareholders of corporate defendants, was properly dismissed where plaintiff's did not allege that judgment had been entered against any of defendant corporations and returned unsatisfied. Garcia v Tamir, 269 A.D.2d 423, 702 N.Y.S.2d 904, 2000 N.Y. App. Div. LEXIS 1373 (N.Y. App. Div. 2d Dep't 2000).

Plaintiff, who in a prior action against the corporate defendant was awarded a judgment for breach of an employment contract, could not maintain a suit pursuant to Business Corporation Law § 630 against the corporation and the largest stockholder thereof as an individual, where there was no allegation that plaintiff had not been paid for work, labor, or services performed by her and in fact the plaintiff's statement that she was paid in full for all work rendered for the corporation appeared in the papers. Lindsey v Winkler, 52 Misc. 2d 1037, 277 N.Y.S.2d 768, 1967 N.Y. Misc. LEXIS 1826 (N.Y. Dist. Ct. 1967).

While CLS Bus Corp § 630 is essentially enforcement mechanism permitting employees of closely held corporations to bring suit against shareholder for wages due, shareholder was nevertheless entitled to day in court to litigate issues involved, and summary judgment was thus inappropriate notwithstanding prior federal court action which determined amount of liability. Matarazzo v Segall, 156 Misc. 2d 1, 600 N.Y.S.2d 890, 1993 N.Y. Misc. LEXIS 263 (N.Y. App. Term 1993).

Labor union's CLS Bus Corp § 630 action to collect delinquent pension fund contributions directly from principal shareholder of corporate employer fell within civil enforcement provision of Employee Retirement Income Security Act (ERISA) and was preempted by 29 USCS § 1132(a) even though shareholder would not be liable for ERISA violations. Romney v Lin, 105 F.3d 806, 1997 U.S. App. LEXIS 1044 (2d Cir.), cert. denied, 522 U.S. 906, 118 S. Ct. 263, 139 L. Ed. 2d 189, 1997 U.S. LEXIS 6000 (U.S. 1997).

Research References & Practice Aids

Cross References:

This section referred to in § 624; CLS Co-op Corp §§ 5, 47.

Application, § 103.

Books and records: right of inspection, prima facie evidence, § 624.

Shareholders: Liability of subscribers and shareholders, § 628.

Directors and officers: Action against directors and officers for misconduct, § 720.

Corporate action and survival of remedies after dissolution, § 1006.

Receivership: Order of payment by receiver, § 1210.

Foreign corporations: Applicability of other provisions, § 1319.

Professional Service Corporations: Professional relationships and liabilities, § 1505.

Applicability of business corporation law to cooperative corporations, CLS Co-op Corp Law § 5.

Personal jurisdiction by acts of non-domiciliaries, CLS CPLR 302.

Wages and commissions and preferred claims, CLS Dr & Cr Law § 22.

Cash payment of wages, CLS Labor Law § 192.

Notice and record-keeping requirements, CLS Labor Law § 195.

Criminal penalties for failure to pay wages, CLS Labor Law § 198-a.

Payment of wages: Benefits or wage supplements, CLS Labor Law § 198-c.

Federal Aspects:

The Investment Company Act of 1940, cited in statutory text, appears as 15 USCS §§ 80a-1 et seq.

Congressional findings and declaration of policy 29 USCS § 1001.

Definitions 29 USCS § 1002.

Coverage 29 USCS § 1003.

Civil enforcement 29 USCS § 1132.

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1977 Survey of New York Law: Business Associations. 29 Syracuse L Rev, No. 1, p. 261, Winter, 1978.

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1983 Survey of New York Law. 35 Syracuse Law Review p. 32.

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1974 Survey of New York Law: Business Associations. 26 Syracuse L. Rev. 197.

Treatises

Matthew Bender's New York Business Entities:

2-6 White, New York Business Entities ¶ B630.01 et seq.

Matthew Bender's New York Practice Guides:

New York Practice Guide: Business & Commercial § 1.06. Corporation.

New York Practice Guide: Business & Commercial § 6.12. Shareholder Rights and Liabilities.

New York Practice Guide: Business & Commercial § 6.21. Incorporation.

Matthew Bender's New York AnswerGuides:

LexisNexis AnswerGuide New York Business Entities § 2.07. Identifying Actions Or Inactions That Could Result in Personal Liability.

LexisNexis AnswerGuide New York Business Entities § 5.09. Defining Rights and Powers of Shareholders.

Annotations:

Liability of member or former member of marketing or purchasing cooperative for its debts or losses. 96 ALR3d 1243.

Matthew Bender's New York Checklists:

Checklist for Identifying Liability Issues When Selecting Entity Form LexisNexis AnswerGuide New York Business Entities § 2.02.

Checklist for Assessing C Corporation LexisNexis AnswerGuide New York Business Entities § 2.37.

Checklist for Assessing S Corporation LexisNexis AnswerGuide New York Business Entities § 2.39.

Checklist for Defining Shareholders', Officers', and Directors' Powers LexisNexis AnswerGuide New York Business Entities § 5.08.

Forms:

LexisNexis Forms FORM 70-BC630:1.—Notice by Laborer, Servant or Employee of Corporation of Intention to Hold Shareholder Liable for Wages, Debts or Salaries.

LexisNexis Forms FORM 70-BC630:2.—Complaint in Action by Employee Against Shareholders to Recover Wages.

LexisNexis Forms FORM 70-BC630:3.—Answer Containing Affirmative Defense That Employee's Action Against Shareholder is Time Barred.

LexisNexis Forms FORM 70-BC630:4.—Notice by Shareholder Liable for Wages Demanding Contribution From Other Shareholder.

LexisNexis Forms FORM 70-BC630:5.—Complaint in Action by Shareholder for Contribution for Liability for Wages.

LexisNexis Forms FORM 70-BC624:6.— Demand for Inspection of Record of Shareholders by Employees .

LexisNexis Forms FORM 70-BC630:6.—Complaint in Action by Labor Union Against Shareholders to Recover Unpaid Pension Benefits.

LexisNexis Forms FORM 70-BC630:7.—Complaint in Action by Pension Fund Trustee Against Shareholders to Recover Payments Required by Collective Bargaining Agreement.

LexisNexis Forms FORM 812-Form B630:1.— Notice by Corporate Employee of Intention to Hold Shareholder Liable for Payments for Services.

LexisNexis Forms FORM 812-Form B630:2.— Notice by Shareholder that He Will Claim Contribution.

LexisNexis Forms FORM 812-Form B630:3.— Complaint in Action by Employee Against Shareholder to Recover Payments for Personal Services.

LexisNexis Forms FORM 812-Form B630:4.— Complaint in Action by Shareholder for Contribution for Liability for Personal Services.

White, New York Business Entities Form B630:1. Notice by Corporate Employee of Intention to Hold Shareholder Liable for Payments for Services.

White, New York Business Entities Form B630:2. Notice by Shareholder that He Will Claim Contribution.

White, New York Business Entities Form B630:3. Complaint in Action by Employee Against Shareholder to Recover Payments for Personal Services.

White, New York Business Entities Form B630:4. Complaint in Action by Shareholder for Contribution for Liability for Personal Services.

Hierarchy Notes:

NY CLS Bus Corp

NY CLS Bus Corp, Art. 6

Forms

Forms

Form 1Notice of Intention to Enforce Shareholder Liability for Services Rendered

Form 2Complaint by Laborer, Servant or Employee Against Stockholder

Form 1

Notice of Intention to Enforce Shareholder Liability for Services Rendered

[Address to Particular Shareholder]

Sir:

Pursuant to the provisions of § 630 of the Business Corporation Law of New York, you are hereby notified that the undersigned intends to enforce your personal liability, as one of the ten largest shareholders of _____, Inc., and to charge you with indebtedness of said corporation to the undersigned for services performed for the corporation consisting of [state nature of services] as an employee of the corporation between _____, 20_____, and _____, 20_____, in the amount of $_____.

Services of the undersigned for the corporation were terminated on the _____ day of _____, 20_____, and the corporation has failed to pay the amount above stated which is justly due to the undersigned [as per contract dated the _____ day of _____, 20_____], notwithstanding thereunto demanded.

Dated at _____, New York, this _____ day of _____, 20_____.

[Name and Address of Claimant]

Form 2

Complaint by Laborer, Servant or Employee Against Stockholder

[Caption; introductory paragraph]

1. The plaintiff was at all times hereinafter mentioned a resident of the City of _____, County of _____ and State of New York.

2. The defendant is and at all times hereinafter mentioned was, on information and belief, a business corporation duly organized pursuant to the Laws of the State of _____, having its office in the City of _____, County of _____ and State of New York, and duly authorized to do business in the State of New York, by the filing of a certificate with the Secretary of State of the State of New York on the _____ day of _____, 20_____.

3. On information and belief, that at all times hereinafter mentioned, defendant was and now is one of the ten largest shareholders of said _____, and that the shares of such corporation are not traded on a national securities exchange or regularly traded in an over-the-counter market by one or more members of a national or an affiliated association.

4. Heretofore and prior to the commencement of this action, the plaintiff performed work, labor and services as a laborer, servant and employee of and for _____, at its request and upon its promise to pay therefor, on and about its premises situated in the City of _____, New York, of the agreed price and reasonable value of $_____.

5. The plaintiff duly gave to the defendant due notice in writing within ninety days after the termination of such services, that the plaintiff intended to hold the defendant liable as a stockholder of the said _____ for the value of such work, labor and services, and that such due notice in writing was served upon the said defendant as such stockholder at his principal place of business in the City of _____, _____, within ninety days after the termination of such services.

6. That plaintiff has heretofore brought an action against said corporation to recover the amount due him for services rendered as hereinabove stated, in the _____ Court of _____ County, New York, and recovered judgment thereon against said corporation for $_____, damages and $_____, costs, with interest, which judgment was entered by the court on the _____ day of _____, 20_____, and upon which plaintiff caused execution to issue forthwith, but which execution was returned “unsatisfied” on the _____ day of _____, 20_____, and within ninety days prior to institution of this action.

7. By reason of the premises the defendant is indebted to the plaintiff in the sum of $_____ with interest thereon from the _____ day of _____, 20_____.

WHEREFORE, the plaintiff demands judgment against the defendant in the sum of $_____, with interest thereon from the _____ day of _____, 20_____, together with the costs and disbursements of this action.

[Verification] [Indorsement and Address]