

Ohio Business Litigation Blog

A blog about Ohio business litigation and beyond.

[Home](#)
[About Me](#)

Sunday, November 28, 2010

Non-Compete/Confidentiality Agreement Between Independent Contractor And Mistakenly Unincorporated Corporation Held To Be Valid And Enforceable By Ohio's Tenth Appellate District

Starting a business or making fundamental changes to the structure of a growing business can be an exciting, fast paced, and a potentially confusing experience for small business owners and entrepreneurs. Finding the time to deal with customers, manage employees, market products and services, and complete other daily tasks necessary to maintain and grow a business can be challenging enough. The added requirement of keeping a business legal can be time consuming and overwhelming. When fundamental changes are undertaken without proper legal advice and support, mistakes can happen that lead to unnecessary risk and liability.



A mistake that sometimes occurs, is a new or growing company forgets to file paperwork necessary to convert or register its business with the Ohio Secretary of State. This is what happened in [Americare Healthcare Servs. v. Akabuaku, 2010 Ohio 5631, No. 10AP-777](#) (10th Dist., Franklin Co., November 18, 2010), when America Healthcare Services, LLC ("Americare"), a home health care agency, attempted to convert its business from a Limited Liability Company to a Corporation, but forgot to file the necessary paperwork to complete the conversion. When Americare subsequently filed a lawsuit against former employees who had violated non-competition agreements in their employment contracts, the former employees argued that since the non-compete agreements were with "Americare Healthcare Services, Inc.," (not Americare LLC) a corporation that did not exist when the agreements were signed, the agreements were invalid and unenforceable.

Subscribe To This Blog!

 Posts

 Comments

DISCLAIMER

This blog/web site is available for informational and educational purposes only and it is not intended to provide legal advice or create an attorney client-relationship. The contents of this blog contains general information and may not reflect current legal developments, verdicts or settlements. Readers of this blog should not use this site or the information on this site as a substitute for competent legal advice from a licensed professional attorney in your state who can familiarize themselves with your individual situation. Some links within the blog may lead to other web-sites, including those operated and maintained by third parties. This blog includes these links solely as a convenience to you, and the presence of such a link does not imply a responsibility for the linked site or an endorsement of the linked site, its operator, or its contents. If you believe that the site contains any factual inaccuracies, false, disparaging, slanderous, libelous, defamatory, or other information, please contact me (AaronMinc@GMail.com) about revising or removing the content. Information and contents provided on this blog are provided "AS IS" without warranty of any kind and the author disclaims any liability for damages from use of this blog or its content.

My Blog List

WSJ.com: Law Blog

It's Here: Cuomo Files Suit Against E&Y Over Lehman Meltdown

Under Ohio Law, a business that fails to properly incorporate may still be treated as registered corporation, if it meets the requirements of a de facto corporation or corporation by estoppel doctrine.

To achieve the status of a de facto corporation, a business entity must make a good-faith attempt to comply with statutory provision governing incorporation. Jade Sterling Sttel Co. v. Stacey, 8th Dist. No. 88283, 2007 Ohio 532. In Americare Healthcare Servs., the court found that Americare did not qualify as a de facto corporation because, although Americare believed it had taken appropriate steps to incorporate by notifying all the entities that it worked with of the change and revising all of its forms to reflect a new corporate structure, it failed to file articles of incorporation with the Ohio Secretary of State, as required by O.R.C. 1701.04. See Jade Sterling (rejecting de facto corporation argument where business entity sent articles of incorporation to the Secretary of State, but failed to show any good-faith effort to verify or complete the incorporation); Quality Interiors, Inc. v. Am. Mgt. & Dev. Corp. (Dec. 7, 1990), 11th Dist. No. 89-T-4303 (no de facto corporation formed where articles of incorporation were not filed with the state).

However, the court did find that Americare qualified as a corporation by estoppel. Under the corporation by estoppel doctrine, a person who enters into a transaction and treats an organization as a corporation will be estopped (disallowed) from later denying the existence of the corporation. Society Perun v. Cleveland (1885), 43 Ohio St. 481, 490; Lowe v. Tire Clearing House Co. (Nov. 3, 1924), 8th Dist. No. 5253 (affirming judgment where the trial court found that the defendant was estopped from denying the plaintiff's corporate existence, having contracted with the plaintiff; "[w]hen a contract has been made from which a party has derived benefits, estoppel applies"). The court found that Americare qualified as a corporation by estoppel because the former employees contracted with Americare, Inc., without objection, treated Americare as a corporation, and because it would not have been unfair to hold the defendants to their non-compete agreements. The court subsequently found the non-competition agreements to be otherwise valid and enforceable and affirmed the an injunction that was granted for Americare by the trial court.

Although the court treated Americare as a corporation by estoppel and upheld the non-compete agreements made with the former employees, the case serves as an example of the unnecessary risks that a business can face when mistakes are made and basic legal requirements are not met. Under different facts, the non-competition agreements may have not been found enforceable and Americare could have exposed itself unnecessary liability. If you are in the process of launching or making fundamental changes to a business, you should contact an attorney in your area to make sure that you receive proper legal counsel for the process.

Posted by Aaron Minc at 9:50 PM     

Labels: [corporation by estoppel](#), [De facto corporation](#), [Independent contractor](#), [non competition agreement](#), [Ohio Business Litigation Blog](#), [Ohio Law](#)

0 comments:

Post a Comment

18 minutes ago

Above the Law

Associate Bonus Watch: Simpson Thacher Matches Cravath

47 minutes ago

Ohio Employer's Law Blog

Merry Christmas employers—NLRB proposes posting of federal labor rights for ALL covered employees

1 hour ago

SCOTUSblog

Tuesday round-up

1 hour ago

Daily Case Announcement

Supreme Court Case Announcement for Dec. 21, 2010

2 hours ago

Chicago Business Litigation Lawyer Blog

New York Times Reports That New California Law is Preventing Consumers in Foreclosures From Hiring Attorneys Because too Many Lawyers in That State had Been Assisting in Foreclosure Assistance Scams

2 hours ago

How Appealing

"Don't ask, don't tell" lawsuits to remain active"

14 hours ago

SEC ACTIONS

THE SEC'S FIRST NON-PROSECUTION AGREEMENT

14 hours ago

North Carolina Business Litigation Report

Judge Diaz Confirmed To The Fourth Circuit

20 hours ago

Lawyerist

Track Jurors with Your iPad

20 hours ago

Delaware Business Litigation Report

Superior Court CCLD Guidelines On EDiscovery

21 hours ago

Ohio Supreme Court News

Domestic Relations Judges Elect 2011 Officers

23 hours ago

Litigation and Trial - Max Kennerly

The SEC's Proposed Dodd-Frank Whistleblower Rules Are Just Fine

1 day ago

Chicago IP Litigation Blog

Expert Opinions Served After Final Pretrial Order Are Excluded

1 day ago



Comment as:

[Newer Post](#)

[Home](#)

[Older Post](#)

Subscribe to: [Post Comments \(Atom\)](#)

Delaware Corporate and Commercial Litigation Blog
Chancery Interprets Indemnification Clause, Holding Duty to Indemnify Not Triggered Until Final Determination Made on Liability
3 days ago

Aaron Morris' Business Law Alert
A Primer on SLAPP Suits and Anti-SLAPP Motions
6 days ago

Wisconsin Business and Commercial Litigation
Judgment Enforcement Made a Little Easier
6 days ago

Northwest Business Litigation
Health care reform ruled unconstitutional in part
1 week ago

Rush on Business
Iowa Judiciary Lawsuit: The First Thing We Do, Let's Kill All The Lawyers
1 week ago

Rogers & Tartaro Business Litigation Blog
Does Social Media Open New Doors for Attorneys?
1 week ago

Ohio Practical Business Law
Using Exemptions from Registration of Securities
2 weeks ago

Connecticut Business Litigation Blog
New Privacy Report From Federal Trade Commission (FTC)
2 weeks ago

California Business Litigation Blog
Parents of 8 Year Old Sue School Over Sexual Harassment
2 weeks ago

Blawg Review
Sabbatical
2 weeks ago

Virginia Business Litigation Lawyer Blog
Judge Cacheris Permits Vicarious Copyright Infringement Claim to Proceed
3 weeks ago

Emergency Business Litigation
a
4 weeks ago

Twin Cities Business Litigation Blog
When are the Terms of a Contract, Unenforceable? Another Arbitration Agreement Case.
5 weeks ago

West Virginia Business Litigation
WV Supreme Court Approves Revised Rules

of Appellate Procedure
2 months ago

Leadership for Lawyers
Power of Gratitude
3 months ago

DeMarco & Triscaro, Ltd.
Parents vs. Non-Parents in Ohio Child
Custody Actions
3 months ago

Archives

- ▼ 2010 (41)
- ▶ December (8)
- ▼ November (7)
- What Happened This Week: 11/22 - 11/28/2010
- Non-Compete/Confidentiality Agreement Between Inde...
- What Happened This Week: 11/14 - 11/21/2010
- On Stage At Ohio Lawyer Swearing-In Ceremony
- Eighth District Rules that Facts Supporting Affirm...
- Amendments To Federal Rule Of Civil Procedure 26 T...
- Interesting Articles And News From Around the Web:...
- ▶ October (8)
- ▶ September (18)

Categories

- 10(d) (1)

MY ZIMBIO
- 6th Circuit (2)

Top Stories
- Account Procedures (1)

Domain Link Exchange
- Action on Account (2)

Seo friendly directory
- ADA (1)

Affordable Shopping
- Admissibility (1)

Cart Software and
- Alter-Ego Theory (1)

Network Management
- Amazon (1)

Systems by
- Americare (1)

Maxxfusion – Website
- authentication (1)

design - hosting -
- Breach of Contract (4)

maintenance
- Business Law (1)

Free East Web
- business litigation (9)

Directory
- Business Litigation Attorney (9)

LOADED WEB
- Business Litigation News (1)

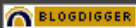
RSS PLAZO O
- ://urlfan.com

- Civil Procedure (2)
- Class Action (2)
- Class Certification (1)
- Cleveland (2)
- consideration (1)
- Contract Interpretation (1)
- Copyright infringement (2)
- corporation by estoppel (1)
- Credit Card Debt (1)
- De facto corporation (1)
- Debt (1)
- Debt Collection (1)
- Declaratory Judgment (1)
- Defamation (1)
- Disclaimer (1)
- Discovery Dispute (3)
- Diversity Jurisdiction (1)
- Drive-up Windows (1)
- Energy Star Litigation (1)
- Enforceability of Account Agreements (1)
- Essential Purpose Doctrine (1)
- Evidence (2)
- Expert Witnesses (2)
- Facebook (1)
- Federal Rules (2)
- Foreclosure (1)
- Forum Non Conveniens (1)
- forum selection clause (1)
- Franchise Law (1)
- Fraud (1)
- FRCP 26 (1)
- Hearsay (1)
- Independent contractor (1)
- inequitable conduct (1)
- Interesting Articles (2)
- Lanham Act Claim (1)

RSS Feed Directory - Search and read RSS Feeds without any RSS reader.



!-- Feedage.com RSS Feed Tracking -->



Top Stories



MV Blogs Directory

I'm a Insignificant Microbe in the TTLB Ecosystem

Web Directory

Submit Blog Directory

The Blog Resource

The SEO King



Top Stories



blog search

- Lawyer (2)
- Legal Writing (1)
- Limited Warranty (1)
- Litigaiton (1)
- Litigation (1)
- Litigation New (1)
- Loan Modification (1)
- Magnetized Floors (1)
- Mist (1)
- Mistake (1)
- Motion to Compel (3)
- motion to dismiss (1)
- mutuality of obligation (1)
- Necessary Party (1)
- non competition agreement (2)
- Ohio (8)
- Ohio Bar Exam Results (1)
- Ohio Business Litigation (5)
- Ohio Business Litigation Blog (7)
- Ohio Law (1)
- Ohio Northern District (1)
- Oho Business Litigation (1)
- Patent Infringement (1)
- Patent Prosecution (1)
- Personal Jurisdiction (2)
- physicians (1)
- Picture (1)
- Pleading Standard (2)
- Preliminary Injunction (1)
- Protective Order (1)
- Random (1)
- Real Estate Deal (1)
- reasonable (1)
- Red Light Cameras (1)
- Redaction (1)
- Removal (1)
- res judicata (1)
- Sales Agreement (1)



Blog Listings
BLOG LISTING

blog directory 001

Blogs Directory

Blog Collector



Business Collective -
Business Log - XML
Post

396 Blogtoplist

Billiga Hotell London
Vote for me

B BLOGHUB

Blog Directory

BLOGGAPEDIA

blogarama
the blog directory



ASR
Search Engine

ON TOPLIST.COM

OnToplist is
optimized by SEO
Add blog to our blog
directory.

- SCOTUS (1)
- screen shots (1)
- SEC (1)
- Settlement Agreement (1)
- Sovereign Immunity (1)
- stream of commerce (1)
- substantial similarity (1)
- summary judgment (2)
- Unconscionability (1)
- Unjust Enrichment (2)
- Unwanted Gift (1)
- useful article (1)
- Venezuela (1)
- Web sites (1)
- What Happened this week (1)
- Whirlpool (1)
- Whole Foods (1)
- Work-Product (1)

Categories

- 10(d) (1)
- 6th Circuit (2)
- Account Procedures (1)
- Action on Account (2)
- ADA (1)
- Admissibility (1)
- Alter-Ego Theory (1)
- Amazon (1)
- Americare (1)
- authentication (1)
- Breach of Contract (4)
- Business Law (1)
- business litigation (9)
- Business Litigation Attorney (9)
- Business Litigation News (1)
- Civil Procedure (2)
- Class Action (2)
- Class Certification (1)
- Cleveland (2)
- consideration (1)
- Contract Interpretation (1)
- Copyright infringement (2)
- corporation by estoppel (1)
- Credit Card Debt (1)
- De facto corporation (1)
- Debt (1)

- Debt Collection (1)
- Declaratory Judgment (1)
- Defamation (1)
- Disclaimer (1)
- Discovery Dispute (3)
- Diversity Jurisdiction (1)
- Drive-up Windows (1)
- Energy Star Litigation (1)
- Enforceability of Account Agreements (1)
- Essential Purpose Doctrine (1)
- Evidence (2)
- Expert Witnesses (2)
- Facebook (1)
- Federal Rules (2)
- Foreclosure (1)
- Forum Non Conveniens (1)
- forum selection clause (1)
- Franchise Law (1)
- Fraud (1)
- FRCP 26 (1)
- Hearsay (1)
- Independent contractor (1)
- inequitable conduct (1)
- Interesting Articles (2)
- Lanham Act Claim (1)
- Lawyer (2)
- Legal Writing (1)
- Limited Warranty (1)
- Litigaiton (1)
- Litigation (1)
- Litigation New (1)
- Loan Modification (1)
- Magnetized Floors (1)
- Mist (1)
- Mistake (1)
- Motion to Compel (3)
- motion to dismiss (1)
- mutuality of obligation (1)
- Necessary Party (1)
- non competition agreement (2)
- Ohio (8)
- Ohio Bar Exam Results (1)
- Ohio Business Litigation (5)
- Ohio Business Litigation Blog (7)
- Ohio Law (1)
- Ohio Northern District (1)
- Oho Business Litigation (1)
- Patent Infringement (1)
- Patent Prosecution (1)
- Personal Jurisdiction (2)
- physicians (1)
- Picture (1)

- Pleading Standard (2)
- Preliminary Injunction (1)
- Protective Order (1)
- Random (1)
- Real Estate Deal (1)
- reasonable (1)
- Red Light Cameras (1)
- Redaction (1)
- Removal (1)
- res judicata (1)
- Sales Agreement (1)
- SCOTUS (1)
- screen shots (1)
- SEC (1)
- Settlement Agreement (1)
- Sovereign Immunity (1)
- stream of commerce (1)
- substantial similarity (1)
- summary judgment (2)
- Unconscionability (1)
- Unjust Enrichment (2)
- Unwanted Gift (1)
- useful article (1)
- Venezuela (1)
- Web sites (1)
- What Happened this week (1)
- Whirlpool (1)
- Whole Foods (1)
- Work-Product (1)

Travel template. Powered by [Blogger](#).