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## C.R. Weaver v. Tri-County Implement, Inc., 2013 MT 309

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*C.R. Weaver v. Tri-County Implement, Inc.*, 2013 MT 309, --- Mont. ---, --- P.3d ---.

**An LLC's obligations are separate from those of its members. The Court only will allow personal liability against a member of an LLC if the member would be liable if acting in an individual capacity. Absent wrongful conduct, the member cannot be held jointly and severally liable for the obligations of the LLC.**

In *C.R. Weaver v. Tri-County Implement, Inc.*, the Montana Supreme Court limited a precedent case to its facts in order to prevent the LLC business form from becoming meaningless. Central to the Court's holding was a key feature of the LLC business form: members of an LLC cannot be held jointly and severally liable for the LLC's obligations.

In the precedent case, *White v. Longley*, 2010 MT 254, 358 Mont. 268, 244 P.3d 753, a contractor deceived homeowners about his credentials, his experience, and the work he would perform. The contractor proceeded to build the Whites' home in his capacity as general manager of Castle Homes, LLC. The contractor's work was so substandard that the house was rendered unlivable. The district court held the contractor jointly and severally liable with Castle Homes, LLC for damages incurred by the Whites because the contractor's own misconduct would subject him to personal liability. The facts of *Weaver* necessitated a different outcome, lest the LLC business form become meaningless.

C.R. Weaver (Weaver) and Michael Smith (Smith) formed Mikart Transport, LLC (Mikart) as a limited liability company in January of 2011. The Articles of Organization listed Weaver and Smith as members or managers and Smith as the registered agent.

Tri-County sells and services farm and industrial machinery, trucks, and trailers in Sidney, Montana. In March of 2011, Smith, on behalf of Mikart, applied for a line of credit at Tri-County. Tri-County approved the application.

On March 31, 2011, Tri-County performed service work for Mikart on a Freightliner truck. Tri-County billed \$12,252.74 for parts, service, and labor. A total of \$6,980.84 was paid

on the account, but \$5,271.90 remained to be paid. On April 19, 2011, Smith requested that Tri-County mount a tank on a Volvo semi-truck and bill the work to Mikart's account. Weaver is the titleholder of the Volvo. Tri-County accepted the project, ordered the tank, outsourced the welding work, and issued an invoice for \$1,086.00. That bill was not paid. Tri-County asserted a lien for service on the vehicle under Montana Code Annotated § 71-3-1201(2)(a) and refused to return the Volvo.

Weaver filed a complaint against Tri-County on December 12, 2011, alleging, among other things, that his Volvo was being wrongfully held. Tri-County responded with an answer, a counterclaim against Weaver, and a third-party complaint against Smith and Mikart seeking payment for the work performed on the Freightliner and Volvo. The district court granted Tri-County's subsequent motion for summary judgment and ordered Mikart to pay \$1,086.00 for work performed on the Volvo, \$5,271.90 for work performed on the Freightliner, and \$21,180.34 in attorney fees and costs pursuant to a provision in the credit application. The district court held Mikart, Smith, and Weaver jointly and severally liable for the judgment. Weaver appealed the imposition of personal liability.

On appeal, the Montana Supreme Court carefully distinguished the facts of *White* from the facts of *Weaver*. In *White*, the contractor's own misconduct "remove[d] any protection from liability that [he] might otherwise have based upon the organization of Castle Homes as a limited liability company" (internal quotations omitted). But the facts of *Weaver* did not establish a basis for personal liability in contract or tort. Weaver was not a party to the contracts for work performed on the Freightliner or the Volvo, and Weaver's personal conduct towards Tri-County did not constitute an actionable tort. "If a member or manager operates an LLC as an empty shell to perpetuate fraud and avoid personal responsibility, that situation would be different, but those

are not the facts here.” In the absence of personal misconduct that would itself be actionable, a member or manager of an LLC cannot be held individually liable for the obligations of the LLC. The Court reversed the portion of the district court’s judgment that imposed joint and several liability on Weaver for the cost of the work performed on the two vehicles and the attorney fees and costs.

Montana practitioners should be aware that the Court is keen to maintain the protections of Montana’s Limited Liability Company Act.<sup>1</sup> Only in instances of personal misconduct so egregious as to give rise to individual liability will the Court allow a member of an LLC to be held jointly and severally liable for the LLC’s obligations.

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Honorable Katherine M. Bidegaray, Seventh Judicial District Court, Cause No. DV 11–156.

For Appellant: William L. Managhan of Managhan Law Firm, Kalispell, Montana.

For Appellees: Ben T. Sather and Eric E. Holm of Sather & Holm, PLLC, Billings, Montana.

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<sup>1</sup> Title 35 Chapter 8 of the Montana Code Annotated.