



CONSTRUCTION LAWLETTER

For Industry Professionals, Directors, Officers, Managers, Agents, Trades and Suppliers

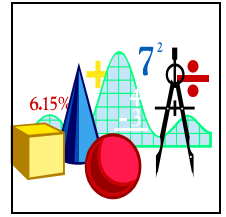
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TRADE SECRETS PROTECTION APPLIES TO LLC's.

One of the litigants urged the Court, on appeal, that an LLC – a Limited Liability Company, in Ohio, was not a “person”. The Court, agreeing, held:

*** ¶ 56} As stated above, R.C. 1333.61, in defining "person," states: ¶ 57} "(C) 'Person' has the same meaning as in division (C) of section 1.59 of the Revised Code and includes governmental entities." ¶ 58}

R.C. 1.59(C) provides: ¶ 59} "As used in any statute, unless another definition is provided in that statute or a related statute: ¶ 60} " *** ¶ 61} "(C) 'Person' includes an individual, corporation, business trust, estate, trust, partnership, and association." ¶ 62}

The trial court, not finding limited-liability companies specifically listed therein, held that limited-liability companies are not covered under the UTSA (Ohio's Uniform Trade Secrets Act). ¶ 63} "Under Ohio law, as elsewhere, an LLC is neither a corporation nor a partnership, as those concepts are commonly understood. Instead, an LLC is a hybrid in that it is a form of legal entity that has attributes of both a corporation and a partnership but is not formally characterized as either one." (Emphasis supplied.)

In re ICLNDS Notes Acquisition, LLC (Bankr.N.D. Ohio 2001), 259 B.R. 289, 292. ¶ 64} "Under Ohio law, a limited liability company ('LLC') is neither a corporation nor a partnership, as those concepts are commonly understood but, instead, is a hybrid. See R.C. 1705.01 *et seq.* Logically, given that an LLC has some of the attributes of a corporation and some of a partnership, an LLC should be governed by the same rules that apply to those entities. Since a LLC's articles of organization are similar to a

corporation's articles of incorporation, and include information similar thereto, the laws regarding corporate organization Page 757 should apply." *Shampton v. Springboro* (Nov. 13, 2001) 12th Dist. App. No. CA 2000-08-080, 2000-09-081, reversed on other grounds (2003), 98 Ohio St.3d 457, 2003-Ohio-1913, 786 N.E.2d 883.

¶ 65} Upon reviewing the case law, we find that while this issue may be one of first impression, a number of courts in Ohio have applied the UTSA to limited-liability companies. See *Curcio Webb, LLC v. Natl. Benefit Programs Agency* (S.D. Ohio 2005) ___ F. Supp 2d ___, 2005 WL 993025; *Extracorporeal Alliance, L.L.C. v. Rosteck* (N.D. Ohio 2003), 285 F.Supp.2d 1028; *Elite Acquisition Corp. v. Nsystems* (March 27, 2001), 10th Dist. App. No. 00AP-1014.

¶ 66} We agree with appellant that to apply the UTSA to all other forms of business associations and entities but to allow limited-liability companies to be exempt from the restrictions and protections of the UTSA would subvert the purposes of the UTSA and create a loophole that could be used to avoid liability.

¶ 67} We therefore find that the UTSA does apply to limited-liability companies.

***Dexxon Digital Storage, Inc. v. Haenzel, 161 Ohio App.3d 747, 756, 2005-Ohio-3187.

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