

## COA Opinion: Genuine issue of material fact exists regarding whether a successor LLC is the mere continuation of the predecessor corporation for purposes of successor liability

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In this breach of a lease agreement action, the Court of Appeals reversed the trial court's grant of summary disposition to defendant corporation Empower and individual defendants Troy and Phyllis, the owners of Empower. In *Lakeview Commons LP v Empower Yourself, LLC*, No. 291728, published after release on November 9, 2010, the Court of Appeals concluded that there is a genuine issue of material fact regarding whether Hamsa, an LLC, is the mere continuation of Empower. However, the Court of Appeals affirmed the trial court's grant of summary disposition on the issue of whether the corporate veil of Empower and Hamsa should be pierced to hold Troy and Phyllis personally liable, because the Court of Appeals determined that the corporate forms of the entities were followed.

The Court of Appeals determined that the record raised a genuine issue of material fact regarding whether Hamsa is merely the continuation of Empower. Empower ceased operations the same month that Hamsa was created. Both Empower and Hamsa were in the same business, served in the same geographic area, and operated in the same manner. Phyllis owned 80 percent of both entities, and Troy owned 20 percent. Phyllis was the president and managing member of both entities, and Troy was the vice president and registered agent of both entities. Troy signed the annual reports and prepared the tax returns for Empower and Hamsa. Neither Empower nor Hamsa keep a corporate minute book or an operating statement; both held informal meetings and did not keep minutes. Neither entity distributed earnings to its members. Troy and Phyllis were signatories on both Empower's and Hamsa's bank accounts. Hamsa used Empower's business telephone number. Empower had a website from 2004 until 2007, when Hamsa created a website. On Hamsa's website, it stated that it was formerly known as Empower.

The Court of Appeals determined that there is no genuine issue of material fact regarding whether Empower's or Hamsa's corporate veil should be pierced. Troy stated that the activities of Empower and Hamsa were not commingled. Empower paid its bills through its bank account, and Hamsa paid its bills through its bank account. Both entities each filed separate tax returns. Troy gave Empower personal loans, and he would deposit the loaned money directly into Empower's bank account, from which Empower would then pay its bills. Troy stated that any check from Empower to Troy or Phyllis was for the partial repayment of the loans. Troy stated that he personally paid for his personal use of Empower's leased vehicles after it ceased operations. The Court of Appeals determined that although Troy admitted that part of the reason Empower ceased operations was to avoid the lease agreement with the plaintiff, this was not sufficient to raise a genuine issue of material fact.