

**MANAGERS BEWARE! HOW THE CORPORATE SHIELD HAS BECOME
TARNISHED AND WHAT MANAGERS OF LIMITED LIABILITY
COMPANIES SHOULD KNOW ABOUT *ALLEN V. DACKMAN***

By Kevin J. Pascale, Esq.

Ask any business owner who is accustomed to doing business in Maryland through an artificial entity such as a limited liability company about the benefits it affords and you are likely to hear that it offers almost complete protection from personal liability. This understanding of the corporate shield has been a mainstay of the business community since time immemorial. Yet a recent decision issued by Maryland's Court of Appeals, Maryland's highest appellate court, *Allen v. Dackman*, 413 Md. 132, 991 A.2d 1216 (2010), now calls into question the notion that limited liability company managers can be so sanguine about their personal exposure for their company's liabilities.

In *Dackman*, the plaintiffs were two minor children who alleged that they suffered injuries caused by exposure to lead paint while living at a property owned by Hard Assets, LLC ("Hard Assets"). In bringing suit against Hard Assets, plaintiffs also sought to hold Jay Dackman, the manager of Hard Assets when it owned the property, personally liable for their injuries. Dackman's involvement with the property was admittedly limited, as he never even visited the property and only dealt with the property through Hard Assets. Moreover, Dackman and Hard Assets never intended to lease the property to anyone, were unaware that plaintiffs were occupying the property until after Hard Assets acquired it at a tax sale, and successfully took legal action to remove plaintiffs from the property once they discovered that the plaintiffs were living there illegally.

Despite these less than sympathetic facts to support plaintiffs' assertion that the corporate shield should be pierced to attach the manager's personal wealth, the Court of Appeals reversed the trial court's summary judgment in favor of Dackman, sending the case back to the trial court for the jury to decide Dackman's personal exposure. The Court of Appeals' holding turned on its interpretation of "Owner" under the Baltimore City Housing Code. The Housing Code defines "Owner" as "any person, firm, corporation . . . who . . . owns, holds, or controls the whole or any part of the freehold or leasehold title to any dwelling or dwelling unit, with or without accompanying actual possession thereof."

This definition of Owner, the Court of Appeals reasoned, includes anyone who holds or controls the title, i.e., has the ability to change or control or effect the interest being controlled. Applying this somewhat pedantic logic, the Court of Appeals then ruled that a jury could conclude that Dackman was an owner for purposes of the Baltimore City Housing Code because he 1) ran the day-to-day affairs of Hard Assets; 2) executed the deed when Hard Assets acquired the property; 3) signed a complaint seeking to remove the tenants; and 4) directed Hard Assets to acquire the property.

If you find the activities listed above to be examples of less than extraordinary conduct for one who manages the affairs of a business, you are probably in good

company. After all, no company can act without some individual who is responsible to initiate the actions necessary to conduct the normal affairs of the business, or to execute title documents or legal pleadings on behalf of the entity. Prior to this opinion, most legal practitioners would have advised their clients that they were insulated from personal liability for these types of acts unless their direct conduct or decisions were tortious in and of themselves. With this ruling, however, that landscape has clearly changed.

This finding that it is the province of the jury to determine whether an individual is potentially responsible personally for the company's liabilities based on definitions found in Baltimore City's housing code is especially surprising. Corporate shields from personal liability have been implemented by statutes enacted by the General Assembly. If those statutes become meaningless because of how a local jurisdiction chooses to define those who can be held liable under local law, we will be faced with the proverbial tail wagging the dog. Taken to its logical conclusion, local codes will effectively trump state law, leaving individuals to sort out which jurisdictions are inhospitable to business interests because those in control face personal liability for no other reason than local law says that they are.

Additionally, there is little in the opinion itself to suggest that its application will be limited to managers of limited liability companies. Based on the definition of Owner in the Baltimore City Housing Code, and the Court of Appeals' conclusion that control of title and other acts are the operative conduct, every officer of a corporation should take pause and reevaluate their individual exposure where they are charged with acting on behalf of the entity. The fact that the Court of Appeals was willing to reach such a result when (i) the plaintiffs were squatting illegally on the property, (ii) Dackman had never even been to the property and acted exclusively through Hard Assets, and (iii) Hard Assets never even intended to rent the property, indicates how far the Court of Appeals is likely to go in future cases to limit our long-standing understanding of the protection afforded by the corporate shield.

In light of the ruling in *Allen v. Dackman*, now is a good time for those who are charged with managing the affairs of a corporate entity to reexamine their corporate structure to maximize personal insulation from corporate liabilities. Those who already find themselves exposed to such liabilities should seek legal counsel from experienced litigators before they find the Courts expanding even further personal exposure established by the ruling in *Allen v. Dackman*. Rosenberg Martin Greenberg has many experienced attorneys capable of fulfilling either of these needs.

If you have any questions concerning these issues, please contact Kevin J. Pascale at (410) 727-6600 or kpascale@rosenbergmartin.com or any other attorney in our litigation group.

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