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Republic Properties Corp. v. Mission West Properties, L.P.: Discouraging Forum Shopping in Maryland by Properly Implementing the Entity Theory of Partnerships

IN *REPUBLIC PROPERTIES CORP. v. MISSION WEST PROPERTIES, L.P.*,¹ the Court of Appeals of Maryland considered novel questions of civil procedure and liability under the state's relatively new uniform partnership act. First, the Court considered whether a Maryland state court may exercise personal jurisdiction over a foreign limited partnership whose only connection to the state is its general partner's reincorporation there.² Secondly, the Court examined whether that Maryland-incorporated general partner may be held liable for the actions of the foreign limited partnership in a dispute among the partners of a second and distinct foreign limited partnership.³

On the first issue, the Court held that the Maryland incorporation of a partner to a foreign limited partnership does not, of itself, confer jurisdiction over that foreign limited partnership because partnerships are distinct legal entities from their partner members.⁴ The Court also held that serving process on the perceived Maryland "agent" of a foreign limited partnership alone was not sufficient to grant jurisdiction to a state court over that foreign limited partnership.⁵ On the second issue, the Court held that the Maryland general partner of a foreign limited partnership will not bear liability for the conduct of that limited partnership in a dispute among members of a separate partnership in a different state.⁶

The Court's holdings assert the "entity theory" of partnerships espoused in the Maryland Revised Uniform Partnership Act.⁷ This important doctrine reflects con-

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1. 895 A.2d 1006 (Md. 2006).

2. *Id.* at 1008.

3. *Id.*

4. *Id.* at 1013–14.

5. *Id.* at 1023.

6. *Id.*

7. MD. CODE ANN., CORPS. & ASS'NS § 9A-201 (LexisNexis 2006).

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temporary business practices and expectations.⁸ While the entity theory has been adopted by a large majority of states, it is not always uniformly implemented.⁹ The Court of Appeals's decision in *Republic Properties* correctly established and clarified Maryland's use of the doctrine, particularly in the confusing procedural arena of personal jurisdiction. Most importantly, the decision announced that Maryland courts discourage forum shopping by out-of-state plaintiffs in business disputes that have attenuated links to the state.

I. THE CASE

The owners of Stellex Microwave Systems, Inc., a high-tech communications firm, wanted to move the company's headquarters to the Silicon Valley region of California.¹⁰ Unable to obtain suitable financing, the owners of Stellex recruited members of Republic Properties Corporation and approached Carl Berg, a Silicon Valley real estate developer.¹¹ These three business groups forged an agreement that resulted in the creation of the Hellyer Avenue Limited Partnership (HALP) in the summer of 2000.¹² HALP consisted roughly of two sides. On one side, Carl Berg's partnership, called Mission West Limited Partnership (MWLP), served as a general partner and controlled 50 percent of HALP.¹³ On the other side, Republic Properties Corporation served as a general partner and the various entities and individuals who owned Stellex Microwave served as limited partners (hereinafter collectively referred to as Republic). Together, this side controlled 50 percent of HALP.¹⁴

HALP was a joint-venture limited partnership that the parties formed to construct and maintain a headquarters for Stellex Microwave on land owned by Berg.¹⁵ The HALP agreement conditioned membership of all partners, except MWLP, on payment of all Stellex's obligations under the lease.¹⁶ Berg claimed that Stellex breached the HALP agreement by failing to pay one of his construction companies for services rendered.¹⁷ MWLP, Berg's half of the HALP partnership, then claimed to expel the Republic partners and refused to pay them distributions from HALP's income.¹⁸ The Republic partners protested that the work done by Berg's construction company was outside of the lease, and that nonpayment was an issue apart

8. REVISED UNIF. P'SHIP ACT prefatory statement (1997).

9. Lance Cole, *Reexamining the Collective Entity Doctrine in the New Era of Limited Liability Entities—Should Business Entities Have a Fifth Amendment Privilege?*, 2005 COLUM. BUS. L. REV. 1, 91–93.

10. *Mission W. Props., L.P. v. Republic Props. Corp.*, 873 A.2d 372, 374 (Md. Ct. Spec. App. 2005), *aff'd*, 895 A.2d 1006 (Md. 2006).

11. *Id.* at 375.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

from the HALP agreement.¹⁹ All disputed agreements and activities took place in California.²⁰

Republic filed suit against MWLP in Maryland in the Circuit Court for Baltimore City.²¹ MWLP was created as a limited partnership under Delaware law and maintained a principal place of business in California.²² MWLP itself included a general partner, Mission West Properties, Inc. (MWI), that was incorporated in Maryland and maintained its principal place of business in California.²³ As required for Maryland incorporation,²⁴ MWI maintained a registered agent in the state.²⁵ Republic opted to sue MWLP through MWI in Maryland after serving process on MWI's agent, even though the corporation was not a party to the HALP agreement.²⁶ Republic sought (1) a judgment that MWLP, acting through MWI, breached the HALP agreement; and (2) damages in the amount of the unpaid HALP distributions.²⁷ MWLP and MWI filed a counterclaim seeking a judgment that Republic breached the HALP agreement.²⁸ MWLP and MWI also filed a motion to dismiss the suit for lack of personal jurisdiction.²⁹

The circuit court denied MWLP's motion to dismiss, concluding that the presence of MWI's agent in Maryland exposed it and MWLP to the authority of state courts.³⁰ Following a week-long bench trial, the circuit court entered judgments in favor of Republic on both the complaint and counterclaim, holding that MWLP breached the HALP agreement, and that MWLP and MWI were jointly and severally liable for damages.³¹ MWLP and MWI appealed the denial of their motion to dismiss and the trial court's decision on the merits of the case.³² On appeal, the

19. *Id.* The Maryland Court of Special Appeals opened its opinion with a paragraph summarizing the complexity and convoluted nature of the facts:

In this case, the parties involved include a publicly traded California real estate investment trust (REIT), six corporations, two limited partnerships, two trusts, a limited liability company, and five businessmen. The parties serve as general or limited partners, or officers or directors of the others. Further complicating matters, the litigants' dispute hinges upon the interrelationships among five contracts running between various permutations of the several parties. In short, we must disentangle a maze of interconnected business entities and determine their relationships en route to a resolution of this appeal.

Id. at 373.

20. *Id.* at 374–77.

21. Republic Props. Corp. v. Mission W. Props., L.P., 895 A.2d 1006, 1009 (Md. 2006).

22. *Id.*

23. *Id.* MWI was originally incorporated in California. *Id.* In 1999, Berg re-incorporated MWI in Maryland. *Id.*

24. MD. CODE ANN., CORPS. & ASS'NS § 2-108 (LexisNexis 2006).

25. Republic Props., 895 A.2d at 1009.

26. *Id.*

27. *Id.*

28. Mission W. Props., L.P. v. Republic Props. Corp., 873 A.2d 372, 373 (Md. Ct. Spec. App. 2005), *aff'd*, 895 A.2d 1006 (Md. 2006).

29. *Id.*

30. *Id.* at 376.

31. *Id.* at 377.

32. *Id.* at 373–74.

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Court of Special Appeals of Maryland held that the circuit court lacked personal jurisdiction over MWLP and vacated the judgment against both defendants.³³ Republic appealed and the Court of Appeals of Maryland granted certiorari to clarify how state courts will apply Maryland partnership law when determining whether they can assert jurisdiction over a defendant to a lawsuit.³⁴

II. LEGAL BACKGROUND

Republic Properties implicated an admixture of substantive partnership law with state and federal procedural doctrine concerning personal jurisdiction and service of process.³⁵ Partnership law has developed in Maryland from a common law doctrine to a uniform statutory system that better serves the needs of contemporary commerce.³⁶ Personal jurisdiction doctrine likewise has evolved, over the last fifty years of United States Supreme Court jurisprudence, into a procedural system better suited to the realities of a country populated by business entities.³⁷ Lastly, states like Maryland have enacted long-arm statutes and procedural rules governing personal jurisdiction both to comport with due process and to ensure proper legal recourse for citizens who evince legal claims against nonresident persons and entities.³⁸ Courts review procedural issues alongside the substantive state law of business associations because intrastate changes to and interstate differences in the latter directly impact the reach and posture of state authority.³⁹

A. *Legal Status of Partnerships and Limited Partnerships*

The law of partnerships has changed significantly in the last one hundred years from a strictly common law doctrine to a series of statutory schemes that seek to meet the needs of contemporary commerce.⁴⁰ Our federal system, however, has not produced a wholly uniform legal treatment of this business form.⁴¹ Further, understanding of core changes to the legal conception of partnerships as business entities

33. *Id.* at 374.

34. *Republic Props. Corp. v. Mission W. Props., L.P.*, 895 A.2d 1006, 1009 (Md. 2006).

35. *Id.* at 1012–13. Judge Harrell opened the opinion by applying a famous quote by Winston Churchill to the complex doctrine of personal jurisdiction: “[It’s] a riddle wrapped in a mystery inside an enigma.” *Id.* at 1008. Judge Harrell gave short shrift to his literary reference by not applying it to the case as a whole. *Republic Properties* did end up being a riddle (personal jurisdiction doctrine), wrapped in a mystery (Maryland long-arm statute and process rules), inside an enigma (a lawsuit implicating Maryland partnership law).

36. *Id.* at 1013.

37. *Id.* at 1015–19.

38. *Id.* at 1012, 1014.

39. *See, e.g., Wench Siemer v. Learjet Acquisition Corp.*, 966 F.2d 179, 183–84 (5th Cir. 1992).

40. ALAN R. BROMBERG & LARRY E. RIBSTEIN, *BROMBERG AND RIBSTEIN ON PARTNERSHIP* § 1.02(a), (b) (2006).

41. Clay B. Wortham, Note, *Revised Uniform Partnership Act: Anomalies of a Simplified, Modernized Partnership Law*, 92 Ky. L.J. 1083, 1084 (2004).

proliferates slowly and can clash with other longstanding legal and procedural doctrines.⁴²

Common law conceived of a partnership as an aggregation of its members; consequently, a partnership enjoyed no legal status apart from those members.⁴³ To illustrate, if A and B formed Carroll Cleaners as a partnership, the law viewed A and B as the partnership and as its partners; the law would not view Carroll Cleaners as the partnership with A and B as partners.⁴⁴ This doctrine likely reflected the majority uses of the partnership form for mostly local businesses operated directly by small groups of owners.

An expansion in the creation of partnerships in the nineteenth century revealed problems with the “aggregate theory.”⁴⁵ Accounting rules, property assessments, insurance, and other legal and regulatory requirements of the modern mercantile state urged a new view of partnerships as entities with limited autonomy.⁴⁶ The National Conference of Commissioners on Uniform State Laws drafted the first Uniform Partnership Act in 1902, seeking to promulgate the “mercantile” or “entity theory” of partnership that viewed such associations as legal entities distinct from their partner members.⁴⁷ Nevertheless, the document returned to the aggregate theory by the time of its release in 1914.⁴⁸ States continued to view partnerships and limited partnerships as aggregations of their members and carved out exceptions to this view only under particular circumstances.⁴⁹ Today, that concept persists in some jurisdictions.⁵⁰

In 1998, Maryland adopted the Revised Uniform Partnership Act⁵¹ (RUPA) and the Revised Uniform Limited Partnership Act.⁵² Both laws expressly assert that

42. *Segars v. McCormick*, 55 P.3d 470, 471 (Okla. Civ. App. 2002) (quoting ALAN R. BROMBERG & LARRY E. RIBSTEIN, *BROMBERG AND RIBSTEIN ON PARTNERSHIP* § 5.08(a) (2002)).

43. *McLane v. Judges of App. Tax Ct.*, 143 A. 656, 660 (Md. 1928).

44. *See David v. David*, 157 A. 755, 757 (Md. 1932), *abrogated by Bozman v. Bozman*, 830 A.2d 450 (Md. 2003). In *David*, the wife of one partner in a wallpaper firm was badly injured when she fell into an elevator shaft on the business premises. *Id.* at 755. The partner's wife could only recover a payment through the concern's insurance if she could establish that the partnership was an entity apart from her husband, who she legally could not sue. *Id.* at 756. The Court of Appeals of Maryland held that the partnership was not an entity distinct from the plaintiff's husband. *Id.* at 757.

45. *McLane*, 143 A. at 660; *see also* BROMBERG & RIBSTEIN, *supra* note 40, §§ 1.02(b), 103(a).

46. *McLane*, 143 A. at 660; *see also* ROBERT W. HILLMAN, ALLAN W. VESTAL & DONALD J. WEIDNER, *THE REVISED UNIFORM PARTNERSHIP ACT* § 201, Authors' Comments (2006).

47. REVISED UNIF. P'SHIP ACT prefatory statement (1997).

48. *Id.*

49. *McLane*, 143 A. at 661 (holding that the Maryland Legislature declared a partnership to be a legal entity for purposes of taxation and assessment by adopting the Uniform Partnership Act).

50. *See, e.g.*, N.Y. P'SHIP LAW § 10 (Consol. 1994); *Williams v. Hartshorn*, 69 N.E.2d 557, 559 (N.Y. 1946); OHIO REV. CODE ANN. § 1775.05 (LexisNexis 2006); *Arpadi v. First MSP Corp.*, 628 N.E.2d 1335, 1338 (Ohio 1994).

51. MD. CODE ANN., CORPS. & ASS'NS § 9A-101 (LexisNexis 2006). A total of thirty-eight states adopted the RUPA by 1998.

52. *Id.* §§ 10-10-10-1105. The RULPA was devised as an “attachment” to the RUPA of 1997. UNIF. LTD. P'SHIP ACT prefatory statement (2001). The National Conference of Commissioners on Uniform State Laws has subsequently adopted a new “stand alone” act. *Id.* Maryland has not yet adopted this ULPA.

partnerships⁵³ and limited partnerships⁵⁴ are entities distinct from their partner members. Uniform partnership and limited partnership laws tend to encourage those having capital to partner with those having the skill to launch viable enterprises by limiting the liability of investors and protecting third parties doing business with the enterprise.⁵⁵ In *Creel v. Lilly*,⁵⁶ the Court of Appeals of Maryland ratified the state's adoption of the "entity theory" as a flexible and modern conception of partnerships and limited partnerships that is "more consistent with the reasonable expectations of commercial entities in today's business world."⁵⁷ In *Della Ratta v. Larkin*,⁵⁸ the Court noted that, while controversial, the new uniform laws eliminated harsh procedures and liabilities that formerly bound partnerships.⁵⁹

Under RUPA, states like Maryland view partnerships as distinct legal entities that exist between partners and the assets of the partnership.⁶⁰ A partner's interest consists of a bundle of rights and liabilities separate from the entity of the partnership itself.⁶¹ Consequently, a partnership can now sue or be sued in its own name and automatically exists beyond the death or severance of a partner.⁶² Application of the entity theory is not absolute, however, and doctrines like fiduciary duty and personal liability for partnership obligations still resemble longstanding concepts that more directly implicate partners.⁶³ There has been a fundamental shift, though, from a primarily aggregate viewpoint on partnerships with some entity elements to a viewpoint that is predominantly entity-based with some exceptions where the aggregate theory must apply.⁶⁴ This model promotes stability in partnerships and simplifies management.⁶⁵ RUPA drafters assert that, in time, the entity theory will simplify legal analysis because courts will address partnerships more like they address other business associations.⁶⁶ Practically speaking, this updated viewpoint

53. MD. CODE ANN., CORPS. & ASS'NS § 9A-201.

54. *Id.* § 10-108 (establishing that Title 9 of the Corporations and Associations article applies to limited partnerships). In addition, Maryland law affords greater legal protection to limited partnerships by establishing that "a limited partner is not liable for the obligations of a limited partnership unless the limited partner is also a general partner . . . or he takes part in the control of the business." *Id.* § 10-303.

55. 68 C.J.S. *Partnership* § 403 (2007).

56. 729 A.2d 385 (Md. 1999).

57. *Id.* at 393.

58. 856 A.2d 643 (Md. 2004).

59. *Id.* at 650.

60. HILLMAN, VESTAL & WEIDNER, *supra* note 46, § 201, Authors' Comments.

61. *Id.*

62. MD. CODE ANN., CORPS. & ASS'NS § 9A-307(a) (LexisNexis 2006). Nowadays, the unfortunate Mrs. David, from *David v. David*, would have recourse to sue her husband's partnership for an insurance payment even if the arcane law disallowing inter-spousal tort litigation still existed in 2006. 157 A. 755, 757 (Md. 1932), *overruled by* Hatzinicolous v. Protopapas, 550 A.2d 947 (Md. 1988).

63. MD. CODE ANN., CORPS. & ASS'NS §§ 9A-306, 404(a). In terms of personal liability, it is noteworthy, though, that RUPA (as adopted by states like Maryland) contains a requirement that creditors exhaust partnership assets before moving against partners personally. In this way, RUPA maintains the entity theory to its fullest extent while not abandoning the traditional conception of direct liability for general partners.

64. HILLMAN, VESTAL & WEIDNER, *supra* note 46, § 201, Authors' Comments.

65. *Id.*

66. *Id.*

supports the realities and expectations of the contemporary business marketplace where partnerships may be multi-state associations that carry on a wider range of business than one hundred years ago.⁶⁷

Certain areas of law, apart from the substantive law of business associations, use the aggregate theory for purposes of equity and administrability of those particular legal doctrines. For example, courts sometimes manage the impact of insurance coverage on partnerships through an aggregate view in order to promote fairness.⁶⁸ Tax law applies under the aggregate theory in that a partnership pays no taxes as an entity. Instead, profits “pass through” to partners who then are taxed individually.⁶⁹ In *C.T. Carden v. Arkoma Associates*,⁷⁰ the Supreme Court sustained the traditional common law view when assessing the citizenship of partnerships for purposes of diversity jurisdiction because our constitutional system discourages expansion of federal court reach into areas of state authority.⁷¹ Accordingly, litigation involving partnerships requires real care in determining what theory of this business entity is at play in the jurisdiction as well as within each legal issue.

B. Personal Jurisdiction Doctrine

Shortly after the passage of the Fourteenth Amendment, the Supreme Court asserted in *Pennoyer v. Neff*⁷² the traditional bases for courts to claim jurisdiction over an individual: physical presence in the state or ownership of property in dispute in the state.⁷³ The Court quickly discovered that business entities presented unique problems for this doctrine and held that states could require corporations to make themselves “legally available” if they chose to conduct business in the jurisdiction.⁷⁴ In *International Shoe Co. v. Washington*,⁷⁵ the Court adopted the “minimum contacts” doctrine, acknowledging the realities of modern life and commercial activity.⁷⁶ The minimum contacts doctrine established that courts

67. *Id.*

68. See, e.g., *Watson v. Agway Ins. Co.*, 677 A.2d 788, 794 (N.J. Super. Ct. App. Div. 1996).

69. J. WILLIAM CALLISON & MAUREEN A. SULLIVAN, *PARTNERSHIP LAW & PRACTICE* § 2:3 (2006).

70. 494 U.S. 185 (1990).

71. *Id.* at 195. In *C.T. Carden*, the Supreme Court asserted that the states have created “a wide assortment of artificial entities possessing different powers and characteristics.” *Id.* at 197. When making subject matter jurisdiction determinations, however, the Court found that federal courts should employ just two categories: corporations and “common law” associations. *Id.* at 189. The common law associations are viewed under the aggregate theory of partnerships. *Id.* at 190. This view, however, is limited to subject matter jurisdiction, an area of procedure where federal courts must construe relevant factors broadly in favor of not granting jurisdiction. See *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002).

72. 95 U.S. 714 (1877), *overruled in part by Shaffer v. Heitner*, 433 U.S. 186, 212 n.39 (1997).

73. *Id.* at 733–34. The Court limited a state’s authority to hale an individual into court to three types of jurisdiction: in personam, in rem, and quasi in rem. *Id.*

74. *St. Clair v. Cox*, 106 U.S. 350, 356 (1882).

75. 326 U.S. 310 (1945).

76. *Id.* at 316. The case concerned the actions of a Missouri corporation’s part-time sales force in Washington. *Id.* at 313–14. Though the doctrine applies equally to individuals and fictional legal entities, it radically changed the legal relationship between business associations and states.

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could claim jurisdiction over non-resident defendants when such persons or entities maintained sufficient substantive contacts with the state, or directed activities at the forum, such that they should reasonably expect to be haled into court there.⁷⁷ It effectively did away with the *Pennoyer* conception of personal jurisdiction in favor of a court-based determination based on evidence and argument regarding whether “fair play and substantial justice” would permit a court to exercise jurisdiction.⁷⁸

Despite this change, the physical presence of an individual—or the statutorily-authorized agent of a business association—in a jurisdiction never lost its primacy in personal jurisdiction law. In *Burnham v. Superior Court*,⁷⁹ the Supreme Court held that direct service of process on an individual in a state stands as a traditional way to obtain personal jurisdiction regardless of whether more substantial contacts exist.⁸⁰ The legal status of business associations, however, complicates the “personal service” rule because the Supreme Court has held that the mere presence of any association agent in a jurisdiction does not grant state courts jurisdiction over that business entity.⁸¹ Minimum contacts or an agent designated to receive process are required.⁸²

C. *Maryland Law Concerning Personal Jurisdiction and Service of Process*

Maryland, like all states, must balance constitutional due process concerns with its own desire to assert full sovereignty and to protect its citizens and their interests.⁸³ The state maintains a “long-arm” statute, establishing that its courts may claim personal jurisdiction over any individual or entity domiciled in, primarily located in, served process in, or organized under the laws of the state, among other considerations.⁸⁴ Maryland also established laws governing service of process, including a specific provision recognizing service of a limited partnership through its resident agent or any general partner or person “impliedly authorized to receive process.”⁸⁵ In addition, Maryland law allows state courts to exercise personal jurisdiction over persons served with process in the state.⁸⁶ The state tempers this rule and others by establishing that such procedural rules can neither extend nor limit the jurisdiction

77. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985).

78. *Id.* at 474–76.

79. 495 U.S. 604 (1990).

80. *Id.* at 621–22.

81. *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 444–47 (1952); see also *Siemer v. Learjet Acquisition Corp.*, 966 F.2d 179, 182–83 (5th Cir. 1992) (holding that the *Burnham* rule does not apply to business associations).

82. *Perkins*, 342 U.S. at 446–47.

83. See generally Bernard Auerbach, *The “Long Arm” Comes to Maryland*, 26 MD. L. REV. 13 (1966).

84. MD. CODE ANN., CTS. & JUD. PROC. §§ 6-101 to 6-104 (LexisNexis 2006). The section of the “long-arm” statute examined in the instant case was MD. CODE ANN., CTS. & JUD. PROC. § 6-102.

85. MD. RULE 2-124(f) (2007).

86. MD. CODE ANN., CTS. & JUD. PROC. § 6-102(a).

of any court.⁸⁷ The goal of these statutory schemes is to maximize state authority while ensuring fundamental fairness and justice in litigation.⁸⁸ Secondly, procedural and jurisdictional law can discourage forum-shopping by plaintiffs by allowing courts to dismiss cases that do not belong in the state.⁸⁹

Correct application of service rules with the long-arm statute and the concerns of due process can elude trial courts, so the Maryland Court of Special Appeals clarified how the procedural pieces interact in *Springle v. Cottrell Engineering Corp.*⁹⁰ In order to ensure a proper claim of jurisdiction, state courts must evaluate (1) whether a defendant was properly served with process; (2) whether the defendant meets one or more of the Maryland long-arm criteria; and (3) whether the claim of jurisdiction comports with the minimum contacts doctrine.⁹¹

III. THE COURT'S REASONING

In *Republic Properties Corp. v. Mission West Properties, L.P.*, the Court of Appeals of Maryland affirmed the decision of the Court of Special Appeals, holding that (1) a foreign limited partnership does not become an automatic domiciliary of Maryland because its general partner was incorporated there;⁹² and (2) service of process within the state upon the resident agent of a domestic corporate general partner of a foreign limited partnership does not confer personal jurisdiction over the foreign limited partnership in a Maryland court.⁹³ Writing for a unanimous Court, Judge Harrell asserted that Maryland courts will uphold the "entity theory" over the common law "aggregate theory" of partnerships and limited partnerships when applying most legal doctrines, including the law of personal jurisdiction.⁹⁴

The Court began by analyzing Republic's theory that Maryland courts could claim jurisdiction over MWLP because its general partner, MWI, re-incorporated in Maryland and thus made both entities domiciliaries under the traditional view of partnerships.⁹⁵ The Court of Appeals looked directly to state partnership law and asserted that the entity theory applied in Maryland, making partnerships distinct legal entities for the purposes of personal jurisdiction.⁹⁶ The Court distinguished *C.T. Carden*,⁹⁷ finding that it applied only to federal court determinations for diversity jurisdiction.⁹⁸ Accordingly, the Court found that Maryland could assert juris-

87. MD. RULE 1-201(b).

88. *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 710-11 (4th Cir. 2002).

89. *Naylor v. Naylor*, 143 A.2d 604, 610 (Md. 1958).

90. 391 A.2d 456 (Md. Ct. Spec. App. 1978).

91. *Id.* at 469.

92. *Republic Props. Corp. v. Mission W. Props., L.P.*, 895 A.2d 1006, 1014 (Md. 2006).

93. *Id.* at 1022.

94. *Id.* at 1013.

95. *Id.* at 1012.

96. *Id.* at 1013 (citing MD. CODE ANN., CORPS. & ASS'NS § 9A-201 (1975, 1999 Repl. Vol.)).

97. 494 U.S. 185, 187 (1990).

98. *Republic Props.*, 895 A.2d at 1013.

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diction over MWI as a business entity incorporated in the state, but not over MWLP because it was incorporated in Delaware and domiciled in California.⁹⁹

The Court then turned to Republic's claim that MWLP was properly served with process in Maryland and that such action conferred jurisdiction to state courts.¹⁰⁰ The Court of Appeals assumed that service comported with the requirements of Maryland law and that MWLP could be served through MWI.¹⁰¹ The Court found, however, that service alone was not sufficient to confer jurisdiction over MWLP.¹⁰² The rules of service do not circumscribe the limits of jurisdiction in Maryland,¹⁰³ nor does service upon a legally-recognized agent of a business entity create the kind of "tag" jurisdiction upheld in *Burnham*.¹⁰⁴ After canvassing personal jurisdiction doctrine since *Pennoyer* and affirming the applicable Maryland requirements,¹⁰⁵ the Court of Appeals determined that service of process alone does not confer jurisdiction over a foreign corporation.¹⁰⁶ The Court then asserted that Maryland courts should view foreign limited partnerships just like they view foreign corporations when determining personal jurisdiction.¹⁰⁷ Lastly, the Court of Appeals found that Republic's suit against MWLP did not meet the requirements of the Maryland long-arm statute or the due process protections of *International Shoe*.¹⁰⁸ MWLP, in essence, lacked minimum contacts with Maryland as an entity, despite the incorporation of its general partner in the state. Accordingly, MWLP was not subject to the jurisdiction of Maryland courts.

The Court of Appeals closed its opinion by stating that Maryland courts could obtain jurisdiction over MWI as a business entity incorporated under the laws of the state, but that the judgment and damages against MWI could not stand.¹⁰⁹ The record revealed that MWI never was an alleged wrongdoer in the dispute over the HALP agreement. The judgment against MWI, then, was based solely on its posi-

99. *Id.* at 1013–14.

100. *Id.* at 1014. Republic asserted that MWLP maintained no direct resident agent in Maryland, but that Maryland Rule 2-124(f) allowed them to serve "any general partner or other person expressly or impliedly authorized to receive service of process." *Id.* Under Republic's theory, MWI was that general partner authorized to receive process for MWLP. *Id.*

101. *Id.*

102. *Id.* at 1015.

103. *Id.* at 1015 (citing MD. RULE 1-201(b) (2003)).

104. *Id.* at 1016. The Court stated that "*Burnham* was confined to circumstances where service of process was made upon a natural person who was personally within the forum state when served. The present case is not analogous to that context." *Id.* That reading of the case appears most plausible, even though the Supreme Court was not so explicit in its majority opinion. One is left to wonder, for now, whether Justice Scalia, author of both the *Burnham* and *C.T. Carden* majority opinions, would agree with the assessment of the Court of Appeals of Maryland.

105. *Id.* at 1020–22 (citing *Springle v. Cottrell Eng'g Corp.*, 391 A.2d 456, 469 (Md. Ct. Spec. App. 1978)).

106. *Id.* at 1022.

107. *Id.*

108. *Id.* at 1023.

109. *Id.*

tion as general partner to MWLP. The Court of Appeals held that such an imputation of breach to a general partner is disallowed under Maryland partnership law.¹¹⁰

IV. ANALYSIS

In *Republic Properties Corp. v. Mission West Properties, L.P.*, the Court of Appeals of Maryland upheld long-established due process protections¹¹¹ and asserted that state law and policy do not support forum shopping among corporate disputants.¹¹² Maryland adopted uniform partnership rules that encourage both business formation in the state and investment by Maryland businesses elsewhere.¹¹³ As established in *Della Ratta*,¹¹⁴ these rules reflect modern commercial practices and needs, rather than relying on common law doctrines that broaden potential liability.¹¹⁵ By viewing partnerships and limited partnerships as distinct legal bodies under the entity theory, Maryland law provides the flexibility and predictability necessary for the formation of effective business enterprises.¹¹⁶ Specific to the law of personal jurisdiction, the new Maryland statutes governing partnerships mean that these associations no longer straddle every single state where a partner member was formed, is domiciled, or conducts business. As a result, those with an interest in the partnership can more accurately predict where that business entity is subject to suit.¹¹⁷ In addition to comporting with the fundamental notions of *International Shoe* and its progeny,¹¹⁸ this doctrine discourages litigants from filing lawsuits in distant forums in hopes of achieving a better outcome.

This lawsuit represented a clear case of forum shopping by the plaintiffs.¹¹⁹ All the parties maintained their principal places of business in California; the HALP partnership was formed in that state; and the disputed contracts and activities all took place there.¹²⁰ The re-incorporation of MWI in Maryland in 1999 was the only link to the state revealed by any of the disputants. The Republic partners must have

110. *Id.*

111. *Id.* at 1023.

112. *Id.* at 1013–14, 1023.

113. See generally MD. CODE ANN., CORPS. & ASS'NS §§ 9A-101 to 1205, 10-101 to 10-1105 (LexisNexis 2006); 68 C.J.S. *Partnership* § 403 (2007).

114. 856 A.2d 643, 650 (Md. 2004).

115. See *Antonic Rigging & Erecting, Inc. v. Foundry E. Ltd.*, 773 F. Supp. 420, 429–30 (S.D. Ga. 1991); BROMBERG & RIBSTEIN, *supra* note 40, § 103(a).

116. *Creel v. Lilly*, 729 A.2d 385, 393 (Md. 1999).

117. HILLMAN, VESTAL & WEIDNER, *supra* note 46, § 201, Authors' Comments.

118. See *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (holding that due process must provide “a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit”).

119. The Court of Appeals never used the phrase “forum shopping” in the opinion, much less scolded the plaintiffs for their egregious exercise of the practice. Given the opportunity that the lawsuit presented for Maryland’s high court to clarify some complex and convoluted legal issues, they may have forgiven Republic Properties Corporation for burdening the taxpayers of the state.

120. *Republic Props. Corp. v. Mission W. Props., L.P.*, 895 A.2d 1006, 1008–11 (Md. 2006).

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foreseen some risk in bringing suit in California. Accordingly, they opted to try their luck in Maryland, relying on outdated doctrine concerning partnerships.¹²¹ At the trial level, their gamble was a success.

This original outcome and the facts of *Republic Properties* reveal why modern business expectations militate for the entity conception and require its proper application. HALP, the limited partnership at issue, consisted not solely of individuals, but of an amalgamation of individuals and various business entities.¹²² The limited partnership they forged likely facilitated financing and investing for the parties while increasing individual operability and limiting personal liability.¹²³ One defendant to this suit, MWLP, was a limited partnership that served as a general partner in HALP.¹²⁴ The other defendant, MWI, was a corporation that served as general partner to MWLP,¹²⁵ but that did not participate directly in HALP.¹²⁶ So the two defendant entities were in a direct partnership relationship, but only one of them, MWLP, maintained the separate partnership relation with the HALP group. As confusing as these arrangements appear,¹²⁷ the parties clearly established their various limited partnerships to achieve their mercantile purposes efficiently, effectively, and in ways that limited their respective liabilities.¹²⁸ The needs of these various parties hardly resemble the example of A and B forming Carroll Cleaners.¹²⁹ Accordingly, the law must reflect and support their legitimate expectations—and does under the entity theory of partnerships by affording the participants greater autonomy and additional protection from the broad liability of past doctrine.

The Court of Appeals correctly applied the entity theory explicit in Maryland law.¹³⁰ Under the former conception of partnerships, when MWI became a Maryland business, MWLP also would have become subject to Maryland law under the aggregate theory.¹³¹ Common law would view MWI and MWLP as a single business

121. *Id.* at 1012. The Mission West defendants in the Maryland suit filed their own suit in California on February 26, 2001. Brief of Respondents at 11, *Republic Props. Corp. v. Mission W. Props., L.P.*, 895 A.2d 1006 (Md. 2006) (No. 41).

122. *Republic Props.*, 895 A.2d at 1008. HALP consisted of a limited partnership, a corporation, a limited liability company, and two individuals. *Id.* at 1024.

123. See Robert W. Hamilton, *Corporate General Partners of Limited Partnerships*, 1 J. SMALL & EMERGING BUS. L. 73, 73–74 (1997).

124. *Republic Props.*, 895 A.2d at 1008.

125. MWI was a REIT, established to manage and lease commercial properties. *Brief of Respondents* at 4, 895 A.2d 1006. A limited partnership with a REIT as corporate general partner represents a common and advantageous way to conduct a real estate development business. See Hamilton, *supra* note 123, at 85.

126. *Republic Props.*, 895 A.2d at 1008.

127. The Court of Appeals noted of the arrangements that “you can’t tell the players without a program.” *Id.* at 1008 n.1 (internal quotation marks omitted).

128. Hamilton, *supra* note 123, at 73.

129. See *supra* Part II.A.

130. MD. CODE ANN., CORPS. & ASS’NS § 9A-201 (LexisNexis 2006).

131. See *Arpadi v. First MSP Corp.*, 628 N.E.2d 1335, 1338 (Ohio 1994) (asserting that “a partnership is an aggregate of individuals and does not constitute a separate legal entity”).

association. Maryland's current partnership law, however, allows these entities to remain legally autonomous to a greater degree.¹³² MWI is subject to the jurisdiction of states where it incorporated, maintains a principal place of business, or maintains sufficient contacts; MWLP is subject to distinct jurisdictional review.¹³³ Likewise, any legal claims asserted against MWLP independently do not automatically impute to MWI as a general partner merely through the existence of the limited partnership.¹³⁴ The Court of Appeals correctly applied the law by examining the circumstances of the lawsuit independently for both defendants—and thereby maintained Maryland's business- and investment-friendly environment.

The decision also upheld clear due process safeguards while not undermining the authority of Maryland trial courts. Maryland's long-arm statute¹³⁵ and process service rules¹³⁶ were established, in part, to ensure that courts offered aggrieved state citizens full recourse for legally-actionable harms.¹³⁷ The long-arm statute grants jurisdiction over any person properly served with process in the state.¹³⁸ The Court of Appeals reaffirmed two important doctrines. First, the service-as-jurisdiction doctrine only applies to individuals (in the mode of *Burnham*) or to the specific entity that maintains an agent in the state ready to accept process.¹³⁹ Secondly, the full requirements for a Maryland court to claim jurisdiction are (1) proper service; (2) qualification under the long-arm; and (3) qualification under the "minimum contacts" doctrine.¹⁴⁰ Those requirements simply were not met regarding MWLP, so the Court properly dismissed the suit against that entity.

The case revealed how partnership and procedural law each must be applied with reference to and understanding of the other. *Republic Properties* ostensibly was decided on procedural grounds: the Court deemed that Maryland lacked jurisdiction over MWLP.¹⁴¹ Embedded in that determination, however, were core conceptual changes to Maryland's business law.¹⁴² The Republic plaintiffs prevailed at trial on

132. MD. CODE ANN., CORPS. & ASS'NS § 9A-101 to 9A-1205.

133. See *Republic Props. Corp. v. Mission W. Props., L.P.*, 895 A.2d 1006, 1022 (Md. 2006) (finding that foreign limited partnerships should be viewed like foreign corporations in jurisdictional review); CHARLES ALLAN WRIGHT & ARTHUR R. MILLER, 4A FEDERAL PRACTICE & PROCEDURE § 1069.4 (3d ed. 1998) (asserting that foreign corporations and their subsidiaries usually must be treated to separate jurisdictional review).

134. MD. CODE ANN., CORPS. & ASS'NS § 9A-306(c). Note that under Maryland law and the RUPA, all partners generally are liable for the obligations of the partnership, so if Republic Properties obtained a judgment against MWLP in California, then MWI could be compelled to make a contribution. However, Maryland law and RUPA require that partnership assets be exhausted first before creditors reach out to partners. *Id.* § 9A-307; REVISED UNIF. P'SHIP ACT § 307 (1997). This represents another important implementation of the entity theory.

135. MD. CODE ANN., CTS. & JUD. PROC. §§ 6-101 to 6-104 (LexisNexis 2006).

136. MD. RULE 2-111 to 126, 3-111 to 126 (2006).

137. Auerbach, *supra* note 83, 39–44.

138. MD. CODE ANN., CTS. & JUD. PROC. § 6-102(a).

139. *Republic Props. Corp. v. Mission W. Props., L.P.*, 895 A.2d 1006, 1021–22 (Md. 2006).

140. *Id.* at 1022.

141. *Id.* at 1023.

142. MD. CODE ANN., CORPS. & ASS'NS § 9A-201 (LexisNexis 2006).

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the lack of clarity that still exists regarding twenty-first century partnerships and how they differ from their common law antecedents.¹⁴³ Maryland courts now have a practical template for analyzing litigation involving these venerable, but much-altered, business forms.

The Court drew a clear and sensible line in *Republic Properties* between rules to promote business and investment growth in the state, and rules that offer residents proper legal recourse to their conflicts. The line favors the creation and expansion of commercial enterprises in Maryland without sacrificing protections for its citizens. In fact, the decision asserts legal protections for citizen business entities by unequivocally implementing the entity theory of partnership. The decision warns forum shopping plaintiffs that Maryland courts will not countenance lawsuits based on attenuated procedural moves and that, in fairness, should be brought in a different state.

V. CONCLUSION

In *Republic Properties Corp.*, the Court of Appeals of Maryland clarified the state's new uniform partnership laws and generated a positive and practical outcome for state business associations.¹⁴⁴ Maryland law expressly views partnerships and limited partnerships as legal entities distinct from their partner members.¹⁴⁵ This entity theory doctrine reflects the realities and needs of contemporary business associations.¹⁴⁶ It also promotes the formation of businesses and growth in investment through the partnership model. Most states adopted the same uniform partnership act as Maryland, but confusion concerning the change from the common law aggregate theory of these businesses to the entity theory persists.¹⁴⁷ Practically speaking, the ruling in *Republic Properties* discourages forum shopping by out-of-state plaintiffs in certain classes of business disputes. The decision does not, however, diminish any of the legal rights or recourse of Maryland citizens. Instead, it clarifies the longstanding requirements for state courts to properly assert authority over defendants in civil litigation.¹⁴⁸ The decision in *Republic Properties* will stand as a strong and clear application of new partnership law, allowing businesses and investors to better predict the future legal landscape in Maryland and other jurisdictions. Lastly, the Court's decision also removes Maryland from the list of de facto favorable destinations for foreign business plaintiffs.

143. *Mission W. Props., L.P. v. Republic Props. Corp.*, 873 A.2d 372, 384–85 (Md. Ct. Spec. App. 2005), *aff'd*, 895 A.2d 1006 (Md. 2006).

144. *Republic Props.*, 895 A.2d at 1013.

145. MD. CODE ANN., CORPS. & ASS'NS § 9A-201.

146. REVISED UNIF. P'SHIP ACT prefatory statement (1997).

147. Cole, *supra* note 9, at 91–93.

148. *Springle v. Cottrell Eng'g Corp.*, 391 A.2d 456, 469 (Md. Ct. Spec. App. 1978).