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Allen v. Dackman: Doing Away with Limited Liability in Maryland

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Recent Decision

THE COURT OF APPEALS OF MARYLAND

ALLEN v. *DACKMAN*: DOING AWAY WITH LIMITED LIABILITY IN MARYLAND

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In *Allen v. Dackman*,[1] the Court of Appeals of Maryland addressed whether an individual member of a limited liability company ("LLC") may be held personally liable for the lead paint injuries suffered by illegal occupants of the LLC's property.[2] The court held that an individual member of an LLC could be personally liable under the Baltimore City Housing Code ("Housing Code") because the trier of fact could find that the member was the "owner" of property by "ha[ving] the ability to change or affect the title" even though the property was purchased in the name of the LLC and could find that the member "personally committed, inspired or participated in" the alleged tort.[3] The court's holding jeopardizes the existence of the limited liability offered by an LLC because the court imposed personal liability on members for the obligations of the LLC.[4] The court instead could properly hold individuals accountable for their tortious conduct while respecting the economically important liability shield by undertaking a three part analysis: (1) interpreting the Housing Code to require the legal ability to change or affect title,[5] (2) interpreting the Maryland

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1. 413 Md. 132, 991 A.2d 1216 (2010).

2. *Id.* at 135–36, 991 A.2d at 1218.

3. *Id.* at 141, 145, 991 A.2d at 1221, 1223–24. References to the Housing Code refer to the Housing Code as it existed during the relevant time period applicable to *Allen v. Dackman*. In 2002, the Baltimore City Council ("City Council") repealed Division V of Article 13 of the City Code, which comprised the Housing Code. Council B. 02-0894, 2002 Balt. City Council (Balt. City 2002). The City Council created the Building, Fire, and Related Codes of Baltimore City, *id.*, which includes a Property Management Code that now governs many of the same issues previously covered by the Housing Code. *Allen*, 413 Md. at 136 n.3, 991 A.2d at 1218 n.3.

4. *See infra* Part IV.

5. *See infra* Part IV.A.1.

Limited Liability Company Act ("MLLCA") to protect members from liability when acting in the good faith service of the LLC,[6] and (3) applying the well-settled doctrine of piercing the corporate veil to LLCs.[7] If the member fails any of these three steps, then the court could properly impose personal liability.[8] Although this reasoning would have led to a different outcome in the present case, this analysis properly weighs the competing interests and would nonetheless hold an LLC member personally liable in cases with the appropriate facts.[9]

I. THE CASE

In 1999, Monica D. Allen and her two minor children moved in with Tracy Allen, the children's grandmother.[10] Sometime later, Mildred Thompkins, the property's landlord, failed to pay the necessary property taxes, resulting in the property's sale in lieu of foreclosure to Hard Assets, LLC in March 2000.[11] At that time, Jay Dackman was one of two members of Hard Assets.[12]

When Hard Assets acquired title to the property, none of its members were aware that Ms. Allen and her children were living at the premises.[13] When the LLC became aware of the Allens' unauthorized use of the property, Hard Assets advised Ms. Allen that she would have to vacate the premises.[14] On August 18, 2000, the District Court for Baltimore City found that Ms. Allen was wrongfully in possession of the property and entered judgment for Hard Assets.[15] On March 16, 2001, Hard Assets sold the property.[16]

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6. *See infra* Part IV.B.2.

7. *See infra* Part IV.C.

8. *See infra* Part IV.

9. *See infra* Part IV.

10. Allen v. Dackman, 184 Md. App. 1, 4, 964 A.2d 210, 212 (2009), *rev'd*, 413 Md. 132, 991 A.2d 1216 (2010). Tracy Allen had resided at the property since the summer of 1998 and was currently leasing the premises from Mildred Thompkins. *Id.*

11. *Id.* at 3–5, 964 A.2d at 211–12. Hard Assets was in the business of "flipping" real estate: The LLC would buy properties encumbered by tax liens and then place the property back on the market for sale. *Id.*

12. *Id.* Over the fifteen years of Dackman's history with purchasing tax liens, he made a practice of selling all properties "as is," never intending to lease the property in question. *Id.*

13. *Id.*

14. *Id.* at 4–5, 964 A.2d at 212. Hard Assets gave Ms. Allen thirty days to vacate the premises. *Id.* However, after thirty days had passed, Ms. Allen still resided at the property. *Id.* at 5, 964 A.2d at 212.

15. *Id.* Ms. Allen and her children did not leave the property until they were forcibly removed on October 23, 2000. *Id.*

16. *Id.*

During the one year period in which the LLC held title to the property, Hard Assets never received or attempted to collect any rent for the property, and Ms. Allen never paid rent to live on the property.[17] During this time, Dackman was responsible for the day-to-day operations of Hard Assets.[18] Dackman was the individual who executed the deed for Hard Assets to acquire the property, signed the complaint to have the Allens removed from the property, and "signed the deed when Hard Assets sold the property."[19] Dackman, however, never once visited the property and never intended to lease the property to anyone.[20]

While residing at the property, both of Ms. Allen's "minor children suffered elevated blood-lead levels."[21] The children suffered elevated blood-lead levels before, during, and after Hard Assets held legal title to the property.[22] Both children suffered their highest elevated blood-lead levels during the time in which Hard Assets owned the property.[23] Ms. Allen, as mother and next friend for her two minor children, filed a complaint against Dackman and Hard Assets in the Circuit Court for Baltimore City on June 11, 2002.[24]

After the close of discovery, Dackman filed a motion for summary judgment.[25] On August 31, 2005, the trial court granted Dackman's motion for summary judgment.[26] Judge Allison first reasoned that Dackman could not be held liable as an individual for negligence be-

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17. *Id.* Not only did Ms. Allen never speak to Hard Assets or Dackman, but Ms. Allen was never aware that Hard Assets owned the property or that Dackman was a member of Hard Assets. *Id.*

18. *Id.*

19. Allen v. Dackman, 413 Md. 132, 149, 991 A.2d 1216, 1226 (2010).

20. *Allen*, 184 Md. App. at 4–5, 964 A.2d at 212.

21. *Id.* at 5, 964 A.2d at 212. Monica Allen was born on September 8, 1996, and Shantese Thomas was born on January 23, 1998. *Id.* at 4, 964 A.2d at 212.

22. *Id.* at 5, 964 A.2d at 212.

23. *Id.*

24. *Id.* at 3, 6, 964 A.2d at 211–12. The complaint alleged that "the minor children sustained injuries as a result of their exposure to lead-based paint while residing at 3143 Elmora Avenue." *Id.* at 3, 964 A.2d at 211. The complaint further alleged that both defendants had violated the Maryland Consumer Protection Act ("MCPA") and "were negligent in failing to properly maintain and safeguard the property against the presence of chipping, flaking, and/or peeling lead-based paint." *Id.*

25. *Id.* at 6, 964 A.2d at 213. Dackman's motion for summary judgment, filed on June 25, 2005, disclaimed all individual liability because Dackman (1) did not lease the property to Ms. Allen, (2) was a member of an LLC, (3) "had no knowledge of the alleged tort," and (4) could not be held liable under the MCPA. *Id.* A line of dismissals was filed as to Hard Assets, which was therefore not party to the appeal. *Id.* at 4 n.2, 964 A.2d at 211 n.2.

26. Allen v. Dackman, No. 24-C-02-003209, 2005 WL 6216355 (Md. Cir. Ct. Aug. 31, 2005), *aff'd*, 184 Md. App. 1, 964 A.2d 210, *rev'd*, 413 Md. 132, 991 A.2d 1216 (2010).

cause Hard Assets, not Dackman, held title to the property.[27] Second, the Maryland Consumer Protection Act ("MCPA") was not applicable because Dackman was not a landlord and never made any actual or implied representations about the property to the plaintiffs.[28] Third, Dackman was not an owner or operator of the property under the Housing Code because finding liability against an individual for acting as an officer of a corporation would be inconsistent with the Housing Code.[29]

The Court of Special Appeals of Maryland held that the circuit court was correct in granting Dackman's motion for summary judgment and affirmed.[30] Judge Wright, writing for the court, first reasoned that, under the Housing Code, an owner must have "control over the title itself."[31] The court stated that there was no evidence that Dackman, as an individual, ever held or had control over the title to the property.[32] Second, the court held that Dackman could not

27. *Id.* ¶ 6. Moreover, Judge Allison noted, the plaintiffs made no claim that the court should pierce the corporate veil of Hard Assets. *Id.*

28. *Id.* ¶ 8. The MCPA has been interpreted by the courts so that "'[a] landlord must be held to be aware of all laws concerning the validity of leasing its premises.'" *Id.* ¶ 7 (quoting Golt v. Philips, 308 Md. 1, 10, 517 A.2d 328, 332 (1986)). "'As the owner of the premises and the landlord, on whom the law imposes specific duties and obligations in connection with the lease of the premises . . . the law imputes the requisite knowledge to the [landlord].'" *Id.* (quoting Benik v. Hatcher, 358 Md. 507, 532–33, 750 A.2d 10, 24 (2000)). The court, however, drew a threshold factual distinction between the precedent cases under the MCPA and the current case. *Id.* ¶ 8. In each of the precedent cases, "the defendant landlord and plaintiff tenant knowingly entered into a lease, and the Defendant was a landlord." *Id.* Here, Judge Allison reasoned, Dackman was unaware that the property was occupied, that "a lease was ever entered to by the previous owner and Plaintiff, and he did not collect rent." *Id.*

29. *Id.* ¶ 11–12. Section 310(a) of the Housing Code required all owners and operators of property to be in compliance with the Code. BALT., MD., BALT. CITY CODE art. 13, div. V, § 301(a) (2000) [hereinafter HOUSING CODE] (repealed 2002). Section 310(b) placed that responsibility on corporate officers and directors. *Id.* § 310(b). Judge Allison reasoned that "'[t]o hold a person liable under section 310(a) merely because he or she was involved in setting up a corporation, or acted as officer or director, would be inconsistent with the requirements of section 310(b).'" *Allen*, 2005 WL 6216355, ¶ 11 (alteration in original) (explaining that the plaintiffs only sought to hold Dackman liable under section 310(a)). Judge Allison concluded by relying on precedent that "'[w]e will not interpret section 310 in a manner that promotes this inconsistency.'" *Id.*

30. *Allen*, 184 Md. App. at 8, 10, 964 A.2d at 214–15. On appeal, the Allens asserted that Dackman could be held individually liable because Dackman was an "owner" or "operator" of the property as defined under the Housing Code. *Id.* at 6–7, 964 A.2d at 213.

31. *Id.* at 8, 964 A.2d at 214. Under the Housing Code, "owner" is defined as "any person, firm, corporation . . . who, alone or jointly or severally with others, 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 possession thereof." HOUSING CODE § 105(jj).

32. *Allen*, 184 Md. App. at 8, 964 A.2d at 214. The court explained that because Dackman "lacked the legal right to sell and convey title to the property, it follows that [Dackman] was not an 'owner' for purposes of the Housing Code." *Id.*

have been an "operator" of the property under the Housing Code.[33] The court reasoned that an operator does not begin to have an "obligation" under the Housing Code until the dwelling is first rented for money.[34] In this case, Dackman neither received nor intended to receive rent for the premises.[35] Third, Judge Wright held that Dackman could not be held personally liable for negligence because the MLLCA specifically states that no member can be personally liable for an obligation of the company solely by reason of being a member of the company.[36] Fourth, the MCPA did not apply because the plaintiffs were not lessees or recipients of consumer realty.[37] The Maryland Court of Appeals then granted certiorari to determine whether an individual member of an LLC can be held personally liable for the lead paint poisoning suffered by illegal occupants of a property owned by the LLC.[38]

II. LEGAL BACKGROUND

Three sources of law present Maryland courts with the opportunity to hold an individual member of an LLC personally liable for alleged torts of the LLC: (1) the Housing Code; (2) the MLLCA; and (3) the court's common law doctrines. First, the Housing Code imposes liability upon all owners of property that do not comply with any provision of the Housing Code.[39] Second, the MLLCA protects individual members from personal liability to the extent that such liability arises "solely by reason" of their member status.[40] Third, the common law allows the court to hold individuals liable for the torts of the cor-

33. *Id.* Under the Housing Code, "operator" is defined as "any person who has charge, care or control of a building, or part thereof, in which dwelling units or rooming units are let or offered for occupancy." HOUSING CODE § 105(hh).

34. *Allen*, 184 Md. App. at 8, 964 A.2d at 214 (internal quotation marks omitted) (relying on the specific phase "'*let or offered for occupancy*'" within the definition of operator).

35. *See id.* at 9, 964 A.2d at 214 (explaining that "Hard Assets never intended to lease the property, nor were its members aware that [Ms. Allen's children] or Ms. Allen" resided at the property and that Hard Assets never offered any part of the building for rent, never entered a lease with Ms. Allen, and never received or attempt to receive rent from Ms. Allen).

36. *Id.*, 964 A.2d at 215 (citing MD. CODE ANN., CORPS. & ASS'NS § 4A-301 (LexisNexis 2007)) ("Thus, [the Allens] cannot succeed in imputing the alleged negligent acts of Hard Assets to [Dackman].").

37. *Id.* at 9–10, 964 A.2d at 215 (explaining that the MCPA is concerned with protecting consumers from "'deceptive trade practices which induce the prospective tenant to enter into such a lease'"). In this case, Judge Wright reasoned that no evidence showed that Hard Assets ever entered into a lease with Ms. Allen. *Id.* at 10, 964 A.2d at 215.

38. Allen v. Dackman, 413 Md. 132, 135–36, 991 A.2d 1216, 1218 (2010).

39. *See infra* Part II.A.

40. *See infra* Part II.B.

poration that they personally commit or direct or to hold an individual member liable by piercing the corporate veil in cases of fraud or paramount equity.[41]

A. The Baltimore City Housing Code

The Housing Code was designed to establish minimum requirements for the protection of the health and general welfare of owners and occupants of dwellings within the City of Baltimore.[42] All owners and operators are required to be in compliance with all provisions of the Housing Code,[43] including the requirement that "[a]ll walls, ceilings, woodwork, doors, and windows shall be . . . free of any flaking, loose, or peeling paint."[44] To enforce the Housing Code, a prima facie case of negligence can be made against all individuals qualifying as an "owner"[45] upon a showing (a) of a violation of the Housing Code that was designed to protect the plaintiff, and (b) that the plaintiff's injury was proximately caused by the violation.[46]

1. The Owner of Property as the Person Who "Owns, Holds, or Controls" Title

The Housing Code places the duty upon all owners of property to be in compliance with every provision of the Housing Code.[47] The Housing Code defines an owner as any person who "owns, holds, or controls" title.[48] The Court of Special Appeals is the only Maryland court that has interpreted the phrase "owns, holds, or controls" title under the Housing Code.[49] The Court of Appeals, however, has interpreted a very similar definition of the term owner under the Lead Poisoning Prevention Act ("LPPA").[50]

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41. *See infra* Part II.C.

42. HOUSING CODE § 103(a)(1) (stating that the Housing Code was intended to "establish and maintain basic minimum requirements, standards, and conditions essential for the protection of the health, safety, morals, and general welfare of the public and of the owners and occupants of dwellings in the City of Baltimore").

43. *Id.* § 310(a)(1).

44. *Id.* § 703(c)(3). Section 703 of the Housing Code had two section 703(b) provisions. This Note will treat the second provision, which describes standards for good repair and safe condition specifically in regard to the interior, as section 703(c).

45. *See infra* Part II.A.1.

46. *See infra* Part II.A.2.

47. HOUSING CODE § 310(a)(1).

48. *Id.* § 105(jj) (stating that an owner is "any person, firm, corporation . . . who, alone or jointly or severally with others 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").

49. *See infra* Part II.A.1.a.

50. *See infra* Part II.A.1.b.

a. Interpreting the Term "Owner" Under the Housing Code

The only previous occasion in which a Maryland court has interpreted the phrase "owns, holds, or controls" within the meaning of the Housing Code was in *Shipley v. Perlberg*.[51] In *Shipley*, the Court of Special Appeals held that the director and officer of a corporation did not own, hold, or control title because the director did not have title to the property and did not "exercise[ ] ownership in the manner contemplated by the Code."[52] Instead, it was undisputed that the corporation at all relevant times owned the subject property.[53]

The court also held that the director could not be personally liable as the owner or operator of the property simply by reason of acting as the director and officer of the corporation.[54] The court compared section 310(a) of the Housing Code with section 310(b).[55] In so doing, the court stated that to hold a director or officer liable under section 310(b), "a plaintiff must show that the individual defendant at least had knowledge of and acquiesced in the wrong committed."[56] To hold a director or officer "liable under section 310(a) merely because he or she was involved in setting up a corporation, or acted as officer or director, would be inconsistent with the requirements of section 310(b)."[57] Therefore, the director was not an owner and could not be held personally liable under section 310(a) as owning, holding, or controlling title.[58]

51. 140 Md. App. 257, 277, 780 A.2d 396, 407 (2001), *abrogated by* 413 Md. 132, 991 A.2d 1216 (2010).

52. *Id.* at 277–79, 780 A.2d at 407. The court also found that the director was not an "operator" because in not being involved in renting the property and never visiting the property he did not have "'charge, care, or control'" as necessary under the Housing Code. *Id.* at 278–79, 780 A.2d at 407–08 (quoting HOUSING CODE § 105(hh)).

53. *Id.* at 277, 780 A.2d at 407 ("There is no evidence that Perlberg had title to the subject property or exercised ownership in the manner contemplated by the Code.").

54. *Id.* at 277–79, 780 A.2d at 407–08.

55. *Id.* (explaining that section 310(a) imposes liability upon owners and operators while section 310(b) imposes liability upon directors and officers of corporations).

56. *Id.* at 278, 780 A.2d at 408.

57. *Id.* "[C]ourts must read all parts of a statute together, with a view toward harmonizing the various parts and avoiding both inconsistencies and senseless results that could not reasonably have been intended by the Legislature." Barr v. State, 101 Md. App. 681, 687, 647 A.2d 1293, 1295–96 (1994).

58. *Shipley*, 140 Md. App. at 277–79, 780 A.2d at 407–08.

b. Maryland Courts Have Interpreted the Word "Owner" Under the Lead Poisoning Prevention Act in a Similar Manner to the Housing Code

Although the Court of Special Appeals is the only Maryland court to have dealt with the phrase "owns, holds, or controls" within the meaning of the Housing Code, the Court of Appeals dealt with a nearly identical definition of the term "owner" under the LPPA in *Dyer v. Otis Warren Real Estate Co.*[59] The LPPA similarly defines an owner as an individual who owns, holds, or controls any part of the property with or without actual possession.[60] The *Dyer* court began by acknowledging the difference between the terms "to own" and "owner."[61] "To own" is to "have a legal or rightful title to" or "to possess" the property.[62] To be an "owner" is to be "a rightful proprietor."[63]

Looking to the statutory scheme as a whole, the court believed that the use of the term "owner" within the LPPA was intended to "'appl[y] only to those [individuals] with the right to control the property.'"[64] Under this interpretation, the defendant could not be held liable simply because of his position as a leasing agent.[65] The court found the mere act of delivering possession of a dwelling to a tenant along with a purchase agreement did not constitute the required level of control.[66] In addition, the court stated that the leasing

59. 371 Md. 576, 578–79, 810 A.2d 938, 940 (2002). *Compare* MD. CODE ANN., ENVIR. § 6-801(o)(1) (LexisNexis 2007 & Supp. 2010) ("'Owner' means a person, firm, corporation, guardian, conservator, receiver, trustee, executor, or legal representative who, alone or jointly or severally with others, *owns, holds, or controls* the whole or any party of the freehold or leasehold interest to any property, with or without actual possession." (emphasis added)), *with* HOUSING CODE § 105(jj) (defining an owner as "any person, firm, corporation, guardian, conservator, receiver, trustee, executor, or other judicial officer, 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" (emphasis added)).

60. ENVIR. § 6-801(o)(1).

61. *Dyer*, 371 Md. at 583, 810 A.2d at 942 (quoting Weinberg v. Balt. & Annapolis R.R. Co., 200 Md. 160, 166, 88 A.2d 575, 577 (1952)) (internal quotation marks omitted).

62. *Id.* (internal quotation marks omitted).

63. *Id.* (internal quotation marks omitted) ("'An owner is not necessarily one owning the fee-simple, or one having in the property the highest estate it will admit of.'"). For example, a mortgagee is considered to be an owner even though legally a mortgagee is only considered to have a lien on the property. *Id.*

64. *Id.* at 588, 810 A.2d at 945–46 (quoting Dyer v. Criegler, 142 Md. App. 109, 117, 788 A.2d 227, 232 (2002)).

65. *Id.* at 585–87, 810 A.2d at 943–45. The court stated, "Any other interpretation would arbitrarily hold property managers and leasing agents to a higher standard than that to which actual owners of the property are held." *Id.* at 585, 810 A.2d at 943.

66. *Id.* at 590–91, 810 A.2d at 946–47. The court also stated that "[m]erely because the respondent was entitled to receive a commission in the event the tenant(s) purchased the

agent could not be held liable as an owner because delivering documents to a tenant is not sufficient to control the interest to the property.[67]

2. Proving Negligence Under the Housing Code

To hold a defendant liable for negligence under the Housing Code, the plaintiff must prove the following elements: (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached that duty; (3) the plaintiff suffered actual injury or loss; and (4) the breach of that duty was the proximate cause of the injury.[68] The required duty of care may be prescribed by statute.[69] If a duty is created by statute—for instance, by the Housing Code—the violation of that statute is considered prima facie evidence of negligence.[70] To find actual negligence, however, the violation of the statute must be the proximate cause of the injury.[71] A violation of the Housing Code will be the proximate cause of the alleged injury where the "plaintiff is within the class of persons sought to be protected, and the harm suffered is of a kind which the drafters intended the statute to prevent."[72]

The Housing Code imposes duties upon all individuals who lease a dwelling for human occupation.[73] In general, the Housing Code prohibits the occupation of any dwelling that is not in conformity with the entire code.[74] Specifically, the Housing Code requires owners to

property does not lead to the conclusion that the respondent maintained 'control' over the property." *Id.* at 590, 810 A.2d at 947.

67. *Id.* at 591, 810 A.2d at 947.

68. Brown v. Dermer, 357 Md. 344, 353–56, 744 A.2d 47, 53–54 (2000), *overruled by* Brooks v. Lewin Realty III, Inc., 378 Md. 70, 835 A.2d 616 (2003), *as recognized in* Allen v. Dackman, 413 Md. 132, 991 A.2d 1216 (2010); Richwind Joint Venture 4 v. Brunson, 335 Md. 661, 670, 645 A.2d 1147, 1151 (1994), *overruled by Brooks*, 378 Md. 70, 835 A.2d 616, *as recognized in Allen*, 413 Md. 132, 991 A.2d 1216.

69. *Brown*, 357 Md. at 358, 744 A.2d at 55. If this is the case, then "what governs is the legislature's intention . . . not necessarily what a 'reasonably prudent' person would do under such circumstances." Schweitzer v. Brewer, 280 Md. 430, 440, 374 A.2d 347, 353 (1977).

70. *Brown*, 357 Md. at 358–59, 744 A.2d at 55; *see also Richwind Joint Venture 4*, 335 Md. at 671–72, 645 A.2d at 1152 ("[A] private cause of action in a landlord/tenant context can arise from a violation of any statutory duty or implied warranty created by the Baltimore City Code.").

71. *Brown*, 357 Md. at 359, 744 A.2d at 55.

72. *Id.* at 359, 744 A.2d at 55; *see also Brooks*, 378 Md. at 79, 835 A.2d at 621 (quoting *Brown*, 357 Md. at 359, 744 A.2d at 55).

73. *Brown*, 357 Md. at 359, 744 A.2d at 55 ("[T]he Baltimore City Housing Code . . . prescribes duties with regard to the lease of housing for human habitation.").

74. *See id.* at 360, 744 A.2d at 56 (explaining that "the housing code prohibits an owner from 'leas[ing] or permitt[ing] the subletting to another for occupancy any vacant or vacated dwelling or dwelling unit which does not comply with [its] provisions'" (alterations in original) (quoting HOUSING CODE § 1001)).

keep the leased premises in good repair and safe condition.[75] "Good repair and safe condition" is further defined as requiring that all dwellings are kept free of any flaking, loose, or peeling paint.[76] The court's imposition of liability for violating the Housing Code has gone through a transition over time: although the owner of property was initially required to have knowledge of the alleged violation before liability could be imposed,[77] liability may now be imposed without the owner's knowledge of the violation.[78]

a. The Owner Was Originally Required to Have Notice of the Defective Condition

The court originally held that the mere showing of flaking, loose, or peeling paint was insufficient to hold an owner liable for negligence under the Housing Code even though the loose paint was in fact a violation.[79] In *Brown v. Dermer*,[80] the Maryland Court of Appeals held that the plaintiff must show that the landlord had notice of the defective condition.[81] The court agreed with precedent and stated that the Housing Code did not change Maryland's common law requirement of notice.[82] The court then outlined a two-part test to prove a prima facie case of negligence: (1) the plaintiff must show

75. HOUSING CODE § 702 ("Every building and all parts thereof used or occupied as a dwelling shall, while in use . . . be kept in good repair, in safe condition, and fit for human habitation."); *see also id.* § 703 (explaining the standards for good repair and safe condition); *Brown*, 357 Md. at 359–61, 744 A.2d at 55–56 (describing the requirement that all dwellings be fit for human habitation (citing HOUSING CODE §§ 701–08)); *Richwind Joint Venture 4*, 335 Md. at 670–71, 645 A.2d at 1151–52 (citing HOUSING CODE §§ 702, 703, 706).

76. HOUSING CODE § 703(c)(3) ("All walls, ceilings, woodwork, doors, and windows shall be kept clean and free of any flaking, loose, or peeling paint and paper."); *see also Brown*, 357 Md. at 359–60, 744 A.2d at 55–56 (explaining the prohibition on flaking or peeling paint in a dwelling's interior); *cf. Richwind Joint Venture 4*, 335 Md. at 679–81, 645 A.2d at 1156–57 (upholding the jury's verdict because there was sufficient evidence to support the verdict where the landlord knew of the peeling paint and knew that paint in old homes often contain lead).

77. *See infra* Part II.A.2.a.

78. *See infra* Part II.A.2.b.

79. *See infra* note 81. R

80. 357 Md. 344, 744 A.2d 47.

81. *Id.* at 361–62, 744 A.2d at 57 ("[A]ll that a plaintiff must show in order to satisfy the reason to know element is that there was flaking, loose or peeling paint and that the defendant had notice of that condition. It need not be shown that the flaking, loose or peeling paint was lead-based.").

82. *Id.* at 362–63, 744 A.2d at 57–58; *see also* Richwind Joint Venture 4 v. Brunson, 335 Md. 661, 674, 645 A.2d 1147, 1153 (1994) ("Thus, the common law and the city code appear consistent with each other as they apply to the prerequisite of knowledge and/or notice. Both require . . . notice of the dangerous condition on the property and a reasonable opportunity to correct it."), *overruled by* Brooks v. Lewin Realty III, Inc., 378 Md. 70, 835 A.2d 616 (2003), *as recognized in* Allen v. Dackman, 413 Md. 132, 991 A.2d 1216 (2010).

that the defendant "knew or had reason to know of a condition on the premises posing an unreasonable risk of physical harm to persons on the premises"—here, sections 702 and 703 of the Housing Code prohibit flaking, loose, or peeling paint;[83] and (2) the plaintiff must show that a defendant "of ordinary intelligence with the same knowledge" would foresee the lead paint injury.[84] In this case, the court held both parts to be satisfied. First, the plaintiff's mother had complained to the defendant about the deteriorating paint before the children were born, giving them the required notice of the condition.[85] Second, the injury was foreseeable because the Housing Code was specifically designed to put landlords on notice about the dangers of child lead paint poisoning, the respondents were aware of city and state laws that banned lead-based paint, and the respondents were aware of city ordinances that required rental properties to be maintained in a habitable condition.[86]

This two-step analysis required that the landlord have notice of the defective condition and a reasonable opportunity to cure it.[87] Neither step imposed upon the landlord a duty to periodically inspect the premises.[88] This rule reflected the court's concern that to hold otherwise would implement a policy in which landlords would "become the 'insurers' of their tenants."[89]

b. The Owner May Now Face Liability Without Knowledge of the Violation

In 2003, the Court of Appeals overruled *Brown* and held that liability could be imposed under the Housing Code without the owner's knowledge of the defective condition.[90] In *Brooks v. Lewin Realty III, Inc.*,[91] the court held that, under the Housing Code, a plaintiff alleging child lead paint poisoning does not have to prove that the owner

83. *Brown*, 357 Md. at 362, 744 A.2d at 57. The court noted that "[t]he fact that a defendant is a landlord or engages in a certain trade is not enough to meet the reason to know standard." *Id.*

84. *Id.* at 362, 744 A.2d at 57 (explaining that the question for the court is "whether the lead-based paint injury is without, or within, the range of reasonable anticipation and probability").

85. *Id.* at 367, 744 A.2d at 60.

86. *Id.* at 367–68, 744 A.2d at 60.

87. *Richwind Joint Venture 4*, 335 Md. at 674, 645 A.2d at 1153.

88. *Id.*

89. *Id.* at 674–75, 645 A.2d at 1153.

90. *See* Brooks v. Lewin Realty III, Inc., 378 Md. 70, 72, 81, 835 A.2d 616, 617, 622 (2003) ("[T]he plaintiff does not have to show that the landlord had notice of the [Housing Code] violation to establish a *prima facie* case.").

91. 378 Md. 70, 835 A.2d 616.

had notice of the violation to establish a prima facie case of negligence.[92] The court reasoned that if a defendant's duty is prescribed by a statute, then the violation of that statute is sufficient to prove a breach of duty in a negligence action.[93]

The court stated that a plaintiff must show the following to make out a prima facie case of negligence: "(a) the violation of a statute or ordinance designed to protect a specific class of persons which includes the plaintiff, and (b) that the violation proximately caused the injury complained of."[94] Proximate cause is established if the plaintiff is protected by the statute and if the harm is of the kind intended to be prevented by the statute.[95] The court concluded that the plaintiff had established a prima facie case of negligence.[96] First, the plaintiff was a child, and the Housing Code exists to protect children.[97] Second, the plaintiff suffered lead paint poisoning, and the Housing Code serves to prevent that exact type of injury.[98] The reasoning of *Brooks*, which requires only the showing of a child who is suffering from lead paint poisoning regardless of the owner's knowledge of the violation, has since been the rule for proving a prima facie case of negligence under the Housing Code.[99]

B. The Maryland Limited Liability Company Act

The MLLCA was designed to provide a combination of favorable tax treatment and limited liability in one business entity while also providing flexibility in establishing the rights of its members.[100] Limited liability companies are generally understood to provide members

92. *Id.* at 72, 835 A.2d at 617 ("[In] a tort action against a Baltimore City landlord, based upon . . . flaking, loose, or peeling paint in the leased premises, in violation of the Housing Code, the plaintiff does not have to show that the landlord had notice of the violation to establish a *prima facie* case."). This holding overruled *Richwind Joint Venture 4 v. Brunson* and its progeny, including *Brown v. Dermer*. *Id.* For more on *Brooks*, see Cori S. Annapolen, Recent Decision, *The Court of Appeals Paints a New Canvas: Imposing Stricter Standards on Landlords to Abate Lead Paint Poisoning in Children*, 64 MD. L. REV. 1268 (2005).

93. *Brooks*, 378 Md. at 78–79, 835 A.2d at 620–21.

94. *Id.* at 79, 835 A.2d at 621.

95. *Id.*

96. *Id.* at 89, 835 A.2d at 627.

97. *Id.*

98. *Id.*

99. *See, e.g.*, Polakoff v. Turner, 385 Md. 467, 473, 869 A.2d 837, 841 (2005) ("We reaffirm our holding in *Brooks* and hold that the standard for establishing a *prima facie* case based on a violation of the Baltimore City Housing Code . . . as enunciated therein applies to all cases not final at the time *Brooks* was filed."); Barksdale v. Wilkowsky, 192 Md. App. 366, 402–04, 994 A.2d 996, 1017–18 (2010) (quoting the rule stated in *Brooks* and clarifying that the rule in *Brooks* establishes a prima facie case of negligence and not negligence per se), *cert. granted*, 415 Md. 337, 1 A.3d 467 (2010).

100. *See infra* Part II.B.1.

with the pass-through tax benefits of a partnership and the liability shield of a corporation.[101] The legislative history of the MLLCA supports this proposition and provides members with great freedom in defining the management of the LLC.[102]

1. Limited Liability Companies Generally

The major interest in LLCs first began in September of 1988, when the IRS stated that LLCs would be considered as partnerships for purposes of the federal income tax if certain tests were met.[103] The formation of an LLC offers a hybrid business structure between partnerships and corporations.[104] Acting like a partnership, an LLC can be structured in a way that allows it to take advantage of federal tax laws permitting pass-through taxation.[105] Acting like a corporation, an LLC offers the owners of the business the same limited liability protection enjoyed by the owners of a corporation.[106] This hybrid offers significant advantages over other forms of business structure by providing greater certainty of the existence of both limited liability and favorable tax treatment.[107]

The existence of limited liability is especially important to foster business growth and economic development through encouraging

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101. *See infra* Part II.B.1.

102. *See infra* Part II.B.2.

103. STUART LEVINE ET AL., MD. STATE BAR ASS'N, SECTIONS OF TAXATION & BUS. LAW, STATEMENT IN SUPPORT OF H.B. 373 (THE MARYLAND LIMITED LIABILITY COMPANY ACT) 1 (1992). This position taken by the IRS then spurred a great deal of interest by state legislatures in creating limited liability statutes. *Id.* at 1 & app. (listing states with limited liability statutes and states that were introducing or expected to introduce legislation). At that time, eight states had already passed legislation implementing LLCs. *Id.*

104. *See* Letter in support of H.B. 373 from Md. Dep't of Econ. & Emp't Dev., to House Judiciary (Feb. 5, 1992) (on file with the Maryland Law Review) ("The proposed Act represents a hybrid between partnerships and corporations that takes the best of both and none of the disadvantages of either.").

105. *E.g.*, Floor Report, H.B. 373, 1992 Gen. Assem., Reg. Sess. (Md. 1992).

106. LEVINE ET AL., *supra* note 103, at 1. The Maryland General Assembly sought to secure a liability shield in the MLLCA by including a provision which states, "no member shall be personally liable for the obligations of the limited liability company, whether arising in contract, tort or otherwise, solely by reason of being a member of the limited liability company." Maryland Limited Liability Act, ch. 536, 1992 Md. Laws 3286, 3297 (1992) (codified at MD. CODE ANN., CORP. & ASS'NS § 4A-301 (LexisNexis 2007)). R

107. LEVINE ET AL., *supra* note 103, at 1–2; *see also* Gebhardt Family Inv., L.L.C. v. Nations Title Ins. of New York, Inc., 132 Md. App. 457, 462–63, 752 A.2d 1222, 1225 (2000) (explaining that the creation of an LLC has the "unique ability to bring together in a single business organization the best features of all other business forms—properly structured, its owners obtain both a corporate-style liability shield and the pass-through tax benefits of a partnership"). R

new investment.[108] Limited liability "decreases the need to monitor agents," "reduces the costs of monitoring other shareholders," "promot[es] free transfer of shares," "makes it possible for market prices to reflect more information about the value of firms," "allows [for] more efficient diversification," and "facilitates optimal investment decisions."[109] The primary benefit of limited liability is that it is capable of changing behavior, thereby facilitating capital investment and economic efficiency.[110]

2. Legislative History of the MLLCA

In the spring of 1990, the State of Maryland began to debate the possibility of new legislation implementing the LLC business structure.[111] The Maryland State Bar Association ("MSBA") was one of the first organizations to study and issue a report on the possibility of an LLC statute within the Maryland Code.[112]

The MSBA report formed the basis of two bills that were introduced in both houses of the Maryland General Assembly in the 1991 session.[113] Over the summer of 1991, the concept of limited liability proposed by these two bills was considered by the Senate Judicial Proceedings Committee and a subcommittee of the House Judiciary Committee.[114] Subsequent to the comments of various legislators and members of the bar, the MSBA issued a second proposed act on November 1, 1992.[115] In 1992, the Maryland General Assembly officially

108. Jeffrey K. Vandervoort, *Piercing the Veil of Limited Liability Companies: The Need for a Better Standard*, 3 DEPAUL BUS. & COM. L.J. 51, 53–54 (2004) (citing FRANK H. EASTERBROOK & DANIEL R. FISCHEL, THE ECONOMIC STRUCTURE OF CORPORATE LAW 41–44 (1991)).

109. EASTERBROOK & FISCHEL, *supra* note 108, at 41–44. R

110. *See* Vandervoort, *supra* note 108, at 54–55 ("[T]he key economic justification for limited liability is based on the premise that apart from the simple shifting of loss from interest holders to creditors, there is a change in behavior due to the limited liability status of interest holders." (citing EASTERBROOK & FISCHEL, *supra* note 108, at 45)). R R

111. LEVINE ET AL., *supra* note 103, at 2. R

112. *Id.* A joint committee was formed and led by the Taxation and Business Law sections of the MSBA. *Id.* This committee issued its first report in September 1991. *Id.* The committee recommended the enactment of enabling legislation and set forth a proposed Act. *Id.*; *see also* Floor Report, H.B. 373, 1992 Gen. Assem., Reg. Sess. (Md. 1992) (explaining that the MLLCA bill was originally proposed by the MSBA sections of Taxation and Business Law).

113. LEVINE ET AL., *supra* note 103, at 2. One bill was introduced into the House while a similar bill was introduced in the Senate. *Id.*; David Conn, *Limited-Liability Format for Companies Proposed*, BALT. SUN, Feb. 27, 1991, at 9B (explaining H.B. 491 and S.B. 345, which were introduced in 1991). R

114. LEVINE ET AL., *supra* note 103, at 2; Blair S. Walker, *Bill to Help New Firms Set to Be Reintroduced*, BALT. SUN, July 23, 1991, at 10D (noting that the Senate Judicial Proceedings Committee reviewed the bill during the summer of 1991). R

115. LEVINE ET AL., *supra* note 103, at 2. R

signed the Maryland Limited Liability Company Act ("MLLCA") into law.[116]

In addition to the liability shield and favorable tax treatment, the MLLCA was specifically designed to provide a flexible business structure.[117] As the MSBA described, one of the guiding principles in the passage of the MLLCA was the premise that the LLC "should be as flexible as possible and should allow its participants broad latitude to manage their affairs."[118] The MLLCA embraced this flexible approach by allowing the parties great freedom in defining the management and economic relationships of the LLC within the operating agreement.[119]

The MLLCA was intended to provide businesses with flexibility regarding tax and business planning.[120] In so doing, the MLLCA was intended to facilitate small business in Maryland and foster greater business development.[121] The MLLCA was seen as "the next logical step in the development of sophisticated business entities."[122]

C. Common Law Liability of Individuals Within a Business Entity

The liability protections afforded corporations and LLCs have never been understood to be absolute. Courts have consistently limited the liability shields of corporations and LLCs to hold individuals personally liable in several appropriate circumstances: (1) individuals of a corporation may be liable for the torts that they personally commit or direct;[123] (2) LLC members are only protected "solely by rea-

116. Maryland Limited Liability Act, ch. 536, 1992 Md. Laws 3286 (1992) (codified primarily at § 4A of MD. CODE ANN., CORP. & ASS'NS (LexisNexis 2007)); Price v. Upper Chesapeake Health Ventures, 192 Md. App. 695, 704, 995 A.2d 1054, 1059 (2010), *cert. denied*, 415 Md. 609, 4 A.3d 514 (2010).

117. LEVINE ET AL., *supra* note 103, at 3. R

118. *Id.*

119. *Id.* (explaining that "many of the provisions of the Act with respect to the internal management of a limited liability company and the economic relationship between the limited liability company and its members can be altered by an 'operating agreement'"). For example, the Act specifically rejects a detailed definition of the term "manager." *Id.* at 4. Instead, the Act favors flexibility and the utilization of agency principles to determine an individual's degree of authority. *Id.*

120. *Id.* at 4 ("In short, the Act is intended to allow businesses to enjoy great flexibility, both with respect to tax planning and business planning.").

121. Lesa N. Hoover, On Behalf of the Members of the Apartment & Office Bldg. Ass'n, Written Testimony Presented to the House Judiciary Committee (on file with the Maryland Law Review); *see also* Letter in support of H.B. 373, *supra* note 104. R

122. LEVINE ET AL., *supra* note 103, at 4. R

123. *See infra* Part II.C.1.

son" of being a member;[124] (3) individuals may be liable by piercing the corporate veil;[125] and (4) individuals may be liable by piercing the LLC veil.[126]

1. Individual Liability of Corporate Officers for Torts That They Personally Commit or Direct

The liability shield of a corporation has never been understood to provide full immunity from all liability.[127] In Maryland, corporate officers and agents have been held liable in tort under two circumstances. First, officers may be "personally liable for those torts which they personally commit, or which they inspire or participate in, even though performed in the name of an artificial body."[128] Second, officers may be liable when they are "present on a daily basis during commission of the tort and give[ ] direct orders that cause commission of the tort."[129]

a. Torts That the Corporate Officer Personally Commits

Corporate officers can be held individually liable for the torts that they personally commit.[130] This theory of liability requires active participation in the tort by the officer.[131] An officer cannot be held

124. *See infra* Part II.C.2. Although the "solely by reason" language stems from the MLLCA, its importance has been created mainly through the courts.

125. *See infra* Part II.C.3.

126. *See infra* Part II.C.4.

127. *See infra* Part II.C. Understanding the case law regarding the liability of individuals in a corporation is helpful in determining how a court may treat a similar set of facts regarding an LLC. The case law regarding LLCs tends to be underdeveloped because LLCs are a relatively recent creation. *See* Sheffield Servs. Co. v. Trowbridge, 211 P.3d 714, 720 (Colo. App. 2009) ("Because the common law doctrine of piercing the corporate veil is most fully developed in cases concerning corporate shareholders, we begin by examining those cases."); *cf.* Bay Ctr. Apartments Owner, LLC v. Emery Bay PKI, LLC, No. 3658-VCS, 2009 WL 1124451, at *9 n.43 (Del. Ch. Apr. 20, 2009) ("[I]n the absence of developed LLC case law, this court has often decided LLC cases by looking to analogous provisions in limited partnership law."). Corporations represent a helpful comparison because LLCs were designed with the specific intention of creating the same liability shield that currently existed in corporations. *See supra* notes 106, 117 and accompanying text; *see also* Westmeyer v. Flynn, 889 N.E.2d 671, 677 (Ill. App. Ct. 2008) (explaining that LLCs were created to operate with limited liability like corporations and commenting that "for liability purposes, a limited liability company should be subject to the same treatment as a corporation"). R

128. Tedrow v. Deskin, 265 Md. 546, 550, 290 A.2d 799, 802 (1972).

129. T-Up, Inc. v. Consumer Prot. Div., 145 Md. App. 27, 72, 801 A.2d 173, 199 (2002).

130. *Tedrow*, 265 Md. at 550, 290 A.2d at 802.

131. *See id.* at 550–51, 290 A.2d at 802 ("If the officer takes no part in the commission of the tort committed by the corporation, he is not personally liable therefore unless he specifically directed the particular act to be done, or participated or cooperated therein."); *T-Up, Inc.*, 145 Md. App. at 72–73, 801 A.2d at 173 ("If an officer 'either specifically directed,

liable for the torts of the corporation if the individual had no knowledge of the tort.[132] "[P]articipation in the tort is essential to liability."[133]

For example, in *Brock Bridge Ltd. Partnership v. Development Facilitators, Inc.*,[134] the Court of Special Appeals held that the president of a general contractor could be held personally liable for negligently estimating the cost of the project.[135] The court reasoned that "[f]ar from being merely an instrument" of the corporation, the president "exercised his own professional judgment and skill in making the cost estimates."[136] The court held that the president could be personally liable for the tort of the corporation because the president personally created the negligent cost estimates.[137]

b. Officer Is Present and Directs the Commission of the Tort

Corporate officers can also be held liable if the individual is present on a daily basis and orders another person to commit the tortious action.[138] Physical participation in the tort itself is not required to assign liability under this reasoning.[139] The officer must still have knowledge of the tort, however, as he is required to be present and direct the commission of the tort.[140]

For instance, in *MaryCLE, LLC v. First Choice Internet, Inc.*,[141] the Court of Special Appeals held that the president of a corporation could be held personally liable for directing the transmission of an

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or actively participated or cooperated in' the corporation's tort, personal liability may be imposed." (emphasis omitted by court) (quoting St. James Constr. Co. v. Morlock, 89 Md. App. 217, 223, 597 A.2d 1042, 1045 (1991)) (internal quotation marks omitted)).

132. *Tedrow*, 265 Md. at 551, 290 A.2d at 802 (explaining that "an officer or director is not liable for torts of which he has no knowledge, or to which he has not consented").

133. *Id.* at 550, 290 A.2d at 802. The court also noted that "there must have been upon his part such a breach of duty as contributed to, or help to bring about, the injury; he must have been a participant in the wrongful act." *Id.* at 551, 290 A.2d at 803.

134. 114 Md. App. 144, 689 A.2d 622 (1997).

135. *Id.* at 166–67, 689 A.2d at 633–34.

136. *Id.* at 167, 689 A.2d at 634.

137. *Id.*

138. T-Up, Inc. v. Consumer Prot. Div., 145 Md. App. 27, 72, 801 A.2d 173, 199 (2002).

139. *See id.* ("Officers of a corporation may be individually liable for wrongdoing that is based on their decisions.").

140. *See* MaryCLE, LLC v. First Choice Internet, Inc., 166 Md. App. 481, 528, 890 A.2d 818, 845–46 (2006) ("Thus, officers and agents of a corporation or limited liability company may be held personally liable for CPA violations when they direct . . . the prohibited conduct."); *T-Up, Inc.*, 145 Md. App. at 72, 801 A.2d at 199 ("And, where a corporate officer is present on a daily basis during the commission of the tort and gives direct orders that cause commission of the tort, the officer may be personally liable.").

141. 166 Md. App. 481, 890 A.2d 818.

unsolicited mass e-mail that was received by the plaintiff.[142] The court reasoned that corporate officers cannot escape liability by not being "hands on" at every step of the action.[143] It was also not necessary for the president to have personally selected any specific e-mail address.[144] It was sufficient that the president personally hired a company to send mass advertising e-mails on his company's behalf.[145]

2. Personal Liability of a Member of an LLC to a Third Party

When the MLLCA was originally passed, the General Assembly included within the Act a provision to protect individual members of an LLC from personal liability.[146] The MLLCA stated in full: "Except as otherwise provided by this title, no member shall be personally liable for the obligations of the limited liability company, whether arising in contract, tort or otherwise, solely by reason of being a member of the limited liability company."[147] When interpreting the liability shield of an LLC, other state courts have focused on the specific phrase "solely by reason."[148]

a. The "Solely by Reason" Language of the MLLCA

The phrase "solely by reason" provides that individual LLC members are protected from liability only because of their status as mem-

142. *See id.* at 530, 890 A.2d at 847 ("[W]e hold that [an Internet service provider's] allegations that [an out-of-state Internet marketing company's president] transmitted or assisted in the transmission of mass email advertisements to Maryland that violated [the Maryland Commercial Electronic Mail Act] were sufficient to surpass a motion for summary judgment . . . .").

143. *Id.*

144. *Id.* ("If [president] directed [out-of-state Internet marketing company] to send hundreds of thousands of email advertisements to persons all over the country, it is not necessary for him to have selected any particular recipient for him to be personally liable for tort violations of this consumer protection statute.").

145. *Id.*, 890 A.2d at 846–47. (Just as [an out-of-state Internet marketing company] knew it was sending emails into Maryland, so did [its president], if he directed that mass mailing."). In its opinion, the court emphasized that the president at no time denied his participation in the mass e-mails. *Id.* at 529–30, 890 A.2d at 846–47 (explaining that the president did not deny making the decision to send the mass e-mails, did not deny retaining the services of Master Mailings to transmit the mass e-mails, and did not allege that the company consisted of any other employees besides himself). Maryland courts, however, have not yet had the opportunity to determine if the manager or member of an LLC can equally be held liable for participating in tortious conduct or for being present on a daily basis and directing tortious conduct.

146. Maryland Limited Liability Act, ch. 536, 1992 Md. Laws 3286, 3297 (1992) (codified at MD. CODE ANN., CORP. & ASS'NS § 4A-301 (LexisNexis 2007)).

147. *Id.*

148. *See infra* Part II.C.2.a.

bers of the LLC.[149] No Maryland court has interpreted or provided any context to help define exactly what "solely by reason" means.[150] Looking to other jurisdictions, there is currently a split among the states as to what the "solely by reason" phrase actually protects against: some states allow LLC members to be held liable when acting in the service of the LLC;[151] other states do not allow members to be held liable when acting in the service of the LLC.[152]

i. In Some States, a Member Is Liable When Acting in Service of the LLC

Some states have interpreted the phrase "solely by reason" to protect members from personal liability only with regard to their status as an LLC member.[153] In other words, the member becomes more than simply a member upon taking some action.[154] This allows individual members to be held personally liable for all tortious activity in which they participate.[155] Liability is imposed on individual members re-

149. *See infra* Part II.C.2.a.i–ii.

150. *Cf.* Allen v. Dackman, 413 Md. 132, 154, 991 A.2d 1216, 1229 (2010) (adopting an interpretation of "solely" from the Supreme Court of Connecticut (citing Weber v. U.S. Sterling Sec., Inc., 924 A.2d 816, 824–25 (Conn. 2007))).

151. *See infra* Part II.C.2.a.i.

152. *See infra* Part II.C.2.a.ii. Not every state has addressed this issue, so there does not yet appear to be a clear majority view.

153. *E.g.*, Commonwealth Land Title Ins. Co. v. M.S.I. Holdings, LLC, No. C.A. 08-217ML, 2008 WL 4681775, at *3 (D.R.I. Oct. 21, 2008) (construing the Rhode Island Limited Liability Company Act and explaining that the "status as a member does not of itself create liability for the LLC's obligations"); Brophy v. Ament, No. CIV 07-0751 JB/KBM, 2008 WL 4821610, at *6 (D.N.M. July 9, 2008) (construing New Mexico's Limited Liability Company Act and stating that "[t]he limited liability company shield relates only to liability arising from a member's status as member"); People v. Pacific Landmark, 29 Cal. Rptr. 3d 193, 199 (Cal. Ct. App. 2005) (stating that "managers of limited liability companies may not be held liable for the wrongful conduct of the companies *merely* because of the managers' status"); Estate of Countryman v. Farmers Coop. Ass'n, 679 N.W.2d 598, 604 (Iowa 2004) ("The phrase 'solely by reason of' refers to liability based upon membership or management status.").

154. *Weber*, 924 A.2d at 824 (noting that to be held personally liable for an LLC's obligation, the LLC member "must do more than merely be a member").

155. *See Commonwealth Land Title Ins. Co.*, 2008 WL 4681775, at *3 (explaining that the "status as a member . . . does not absolve a member from his or her own tort liability" (citations omitted)); *Brophy*, 2008 WL 4821610, at *7 ("Specific direction or sanction of, or active participation or cooperation in, a positively wrongful act of commission or omission . . . is necessary to generate individual liability in damages of an officer or agent . . . ." (quoting Lobato v. Pay Less Drug Stores, Inc., 261 F.2d 406, 409 (10th Cir. 1958))); *Pacific Landmark*, 29 Cal. Rptr. 3d at 199 (stating that "[managers] may nonetheless be held accountable . . . for their personal participation in tortious or criminal conduct"); *Estate of Countryman*, 679 N.W.2d at 604 (finding that tort liability would not be imposed "on a manager for merely performing a general administrative duty" because "[t]here must be some participation").

gardless of whether the alleged wrongful conduct occurred when the individual was acting as the manager or member of the LLC.[156] Under this reasoning, the phrase "solely by reason" is limited to protecting the individual's status as a member, and no protection is afforded to actions taken by the member regardless of whether that action was in service of the LLC.[157]

For example, in *Pepsi-Cola Bottling Co. of Salisbury, Maryland v. Handy*,[158] the Court of Chancery of Delaware denied the defendants' motion to dismiss because the individual defendants, who were LLC members, could be held personally liable for the alleged tortious conduct.[159] The court reasoned that the phrase "solely by reason" necessarily implies that there are some situations in which LLC members may be held personally liable.[160] The court found that the alleged wrongful conduct occurred before the LLC was ever formed.[161] The members therefore could not have been acting solely by reason of being members of an LLC because no LLC existed at the time of the actions.[162]

In *Weber v. U.S. Sterling Securities, Inc.*,[163] the Supreme Court of Connecticut, applying Delaware law, expanded upon the reasoning of the chancery court and held that Delaware law did not bar an individ-

156. *See Brophy*, 2008 WL 4821610, at *6 (stating that "'the fact that a member's conduct is in connection with, or even in the service of, an originally limited liability company will not negate liability'"); *Pacific Landmark*, 29 Cal. Rptr. 3d at 201 (stating that "[solely by reason] does not preclude holding managers liable for their participation in wrongful conduct when acting on behalf of the company"); *Estate of Countryman*, 679 N.W.2d at 604 (finding that "[solely by reason] does not distinguish between conduct of a member or manager that may be separate and independent from the member or management role").

157. A hypothetical may help clarify what these states interpret the phrase "solely by reason" as protecting: Suppose member *A* commits a tort in the name of the LLC against a third party, but member *B* neither knew nor participated in the tortious conduct. The reasoning of these states permits member *A* to be personally liable even if he was acting in service of the LLC. Member *B*, however, cannot be held personally liable "solely by reason" of being a member because member *B* did nothing more than simply be a member of the LLC.

158. No. 1973-S, 2000 WL 364199 (Del. Ch. Mar. 15, 2000).

159. *Id.* at *3–4 (explaining that "a person [who] makes material misrepresentations to induce a purchaser to purchase a parcel of land at a price far above fair market value, and thereafter forms an LLC to purchase and hold the land" may be held liable and cannot "later claim that his status as an LLC member protects him from liability to the purchaser").

160. *Id.* at *3 ("[The] phrase, 'solely by reason of being a member' . . . does imply that there are situations where LLC members and managers would not be shielded by this provision." (quoting DEL. CODE ANN. tit. 6, § 18-303(a) (West 2011))).

161. *Id.* at *4.

162. *Id.*

163. 924 A.2d 816 (Conn. 2007).

ual LLC member's personal liability for tortious conduct.[164] The court stated that an individual member may be personally liable if it is shown that the member took some action and was therefore more than simply a member of the LLC.[165] That is, the limited liability shield does not protect members from their own tortious conduct.[166] The court specifically concluded that the trial court had improperly granted summary judgment in favor of the defendants, two LLC members, because they could be liable for allegedly sending unsolicited faxes to the plaintiff on behalf of the LLC.[167]

Courts in California,[168] Idaho,[169] Iowa,[170] New Mexico,[171] and Rhode Island[172] have applied similar reasoning to impose personal liability on a member for his tortious activity regardless of whether he was acting in the service of the LLC. This group of states has limited

164. *Id.* at 823–25.

165. *See id.* at 824–25.

166. *Id.* at 825.

167. *Id.* at 820 n.1, 822.

168. *E.g.*, People v. Pacific Landmark, 29 Cal. Rptr. 3d 193, 201 (Cal. Ct. App. 2005) (stating that "['solely by reason'] does not preclude holding managers liable for their participation in wrongful conduct when acting on behalf of the company"). The court affirmed the order issuing the preliminary injunction, holding that it was properly issued against the manager of an LLC who allowed prostitution to occur on the LLC's property because of the manager's personal involvement in allowing the nuisance to persist and not "solely because of his *status* as manager of [the LLC]." *Id.* at 202.

169. *E.g.*, Restoration Indus. Ass'n, Inc. v. Certified Restorers Consulting Grp., LLC, No. CV-07-227-S-BLW, 2007 WL 2898698, at *2 n.1 (D. Idaho Sept. 28, 2007) (explaining that the LLC statute does not grant immunity to members and only affords protection solely by reason of being a member (citing J.R. Simplot Co. v. Bosen, 167 P.3d 748, 750 (Idaho 2006))).

170. *Cf., e.g.*, Estate of Countryman v. Farmers Coop. Ass'n, 679 N.W.2d 598, 604 (Iowa 2004) (explaining that "['solely by reason'] does not distinguish between conduct of a member or manager that may be separate and independent from the member or management role"). The court found that a cooperative, acting "as the designated manager of an LLC," could be liable for participating in tortious conduct "through the conduct of those individuals acting on behalf of [the cooperative]" in performing its duties as manager, and the court concluded that the district court improperly granted summary judgment based on the limited liability provisions. *Id.* at 605.

171. *E.g.*, Brophy v. Ament, No. CIV 07-0751 JB/KBM, 2008 WL 4821610, at *6 (D.N.M. July 9, 2008) (stating that a manager's conduct in connection with or in the service of the limited liability company "'will not negate liability'"). The court concluded that regardless of whether they were within the scope of their position within an LLC, two members of an auto repair shop could be held liable for their possibly tortious actions in attempting to collect money and denied their motion to dismiss. *Id.* at *10–11.

172. *E.g.*, Commonwealth Land Title Ins. Co. v. M.S.I. Holdings, LLC, No. C.A. 08-217ML, 2008 WL 4681775, at *3 (D.R.I. Oct. 21, 2008) ("While status as a member does not of itself create liability . . . it does not absolve a member from his or her own tort liability." (citations omitted)). The court denied the LLC member's motion to dismiss after finding that an LLC member could be liable for fraudulent representations that the individual defendant made while working for the LLC. *Id.* at *1–3.

the liability shield of an LLC by narrowly interpreting the phrase "solely by reason" to protect against liability only with regard to the member's status as a member.

ii. In Some States, a Member Is Not Liable When Acting in Service of the LLC

Some courts have interpreted the phrase "solely by reason" to shield individual members from personal liability for actions taken in the management of the LLC.[173] Under this rule, individual members may be liable for their tortious conduct if such conduct occurred outside of the individual's member status.[174] Under this reasoning, the language "solely by reason" protects members from personal liability for affirmative actions taken in the service of the LLC.[175]

For instance, in *Crump v. Mack*,[176] a district court in Virginia, considering Virginia law, found that members of an LLC could not be held personally liable solely by reason of executing a contract on behalf of the LLC.[177] In considering whether to grant the defendants'

173. *E.g.*, Crump v. Mack, No. 6:08CV00017, 2008 WL 4693511, at *2 (W.D. Va. Oct. 23, 2008) ("[Plaintiff] has not alleged any facts supporting a personal agreement with any of the individual Defendants outside of their roles as agents of the company."); HWB, Inc. v. MetalPro Indus., L.L.C., No. 05-6665, 2006 WL 1581329, at *2 (E.D. La. June 7, 2006) (finding that a "wrongful act" must refer "'to acts done outside one's capacity as a member, manager, employee, or agent of the limited liability company'" (quoting Curole v. Ochsner Clinic, L.L.C., 811 So. 2d 92, 97 (La. Ct. App. 2002))); Resheff, Inc. v. 970 Kent Ave. Assocs., LLC, No. 40337/07, 2009 WL 175039, at *7 (N.Y. Sup. Ct. Jan. 26, 2009) (explaining that "it is well settled that a member of a limited liability company is statutorily exempt from individual liability for acts taken on behalf of the company"); Brew City Redevelopment Grp., LLC v. Ferchill Grp., 714 N.W.2d 582, 590–91 (Wis. Ct. App.) (explaining that "neither members of a limited liability company nor its manager may be liable in tort, for their acts or conduct as a member or manager, to third persons"), *aff'd*, 724 N.W.2d 879 (Wis. 2006).

174. *See Crump*, 2008 WL 4693511, at *2 ("[A] member of a[n] LLC may be individually liable where the plaintiff pleads facts demonstrating that particular member's culpability in the company's tortious conduct that extends beyond that his or her mere status as a member of the company."); *HWB, Inc.*, 2006 WL 1581329, at *2 ("Accordingly, a member of an LLC may be liable for his individual negligent or wrongful conduct only if such conduct is done outside of his capacity as a member of the LLC.").

175. Returning to the hypothetical at note 157: Suppose that the tortious conduct committed by member *A* was a misrepresentation about the quality of the LLC's product. If the misrepresentation was a good faith statement of the LLC describing the normal quality of the product, then member *A* would not be personally liable because he acted in service of the LLC. If, however, member *A* misrepresented the quality of the product for the purpose of gaining personal profit at the expense of the LLC, then member *A* could be held personally liable because he did not act in service of the LLC. R

176. No. 6:08CV00017, 2008 WL 4693511.

177. *Id.* at *2 (explaining that the plaintiff had "not alleged any facts supporting a personal agreement with any of the individual Defendants outside of their roles as agents of the company").

motion to dismiss, the court reasoned that the plaintiff must plead facts demonstrating a member's tortious conduct beyond the defendant's mere status as an LLC member in order to state a claim upon which relief can be granted.[178] In this case, the plaintiff entered into a contract with an LLC.[179] The plaintiff intended to be compensated by the LLC, not by the LLC's individual members, and the plaintiff failed to allege any express or implied promise that was not for the benefit of the LLC.[180] Thus, the court found that the plaintiff had failed to allege any actions taken by the individual members beyond their status as members of the LLC and accordingly granted the motion to dismiss against individual LLC members.[181]

A New York court applying similar principles reached the opposite conclusion in *Resheff, Inc. v. 970 Kent Avenue Associates, LLC*.[182] Considering the defendants' motion to dismiss, the court found that the plaintiff had sufficiently alleged that the defendant LLC members "may have been acting with motives other than to benefit [the LLC]" and thus held that they could be held liable for the tortious interference of a business contract.[183] The court reasoned that a member of an LLC is protected from personal liability for acts taken in service of the LLC.[184] This rule only applies, however, if the member acts in good faith.[185] The court found that the plaintiff's complaint, which alleged that the members intentionally induced the breach of a contract for their own profit, sufficiently alleged that the LLC members may have been acting with motives to benefit themselves as opposed to the LLC.[186] The court, however, granted the motion to dismiss because the claim was barred by the statute of limitations.[187]

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. No. 40337/07, 2009 WL 175039 (N.Y. Sup. Ct. Jan. 26, 2009).

183. *Id.* at *7.

184. *Id.*

185. *Id.* A member is not acting in good faith and thus subject to liability "where [he] acted in his or her personal interest, rather than the interests of the company, or where it is alleged that the acts 'were calculated to impair the plaintiff's business for the personal profit of the defendant.'" *Id.* (quoting Joan Hansen & Co., Inc. v. Everlast World's Boxing Headquarters Corp., 744 N.Y.S.2d 384, 391 (App. Div. 2002)).

186. *Id.* The plaintiff in this case alleged that the LLC members intentionally gave the plaintiff wrong information so as to deliberately slow down a construction project and induce the LLC to thus fire the plaintiff. *Id.* at *2. Once the plaintiff was fired, the LLC then hired a new general contractor, whom it was alleged was owned by the LLC members. *Id.*

187. *Id.* at *8.

Courts in Louisiana,[188] North Carolina,[189] and Wisconsin[190] have applied similar reasoning to conclude that members of an LLC are not personally liable when acting in the service of the LLC.[191] This

188. *See, e.g.*, HWB, Inc. v. MetalPro Indus., L.L.C., No. 05-6665, 2006 WL 1581329, at *2 (E.D. La. June 7, 2006) (relying on precedent that held that a "'wrongful act'" must refer "'to acts done outside one's capacity as a member, manager, employee, or agent of the limited liability company'" (quoting Curole v. Ochsner Clinic, L.L.C., 811 So. 2d 92, 97 (La. Ct. App. 2002))). The court concluded that dismissal of plaintiff's claims was proper because "[i]n order to establish liability in an individual capacity, the individual's negligent or wrongful conduct must be performed outside of that individual's capacity as a member of the LLC" and here plaintiff had alleged no facts that plaintiff had acted outside of the member's status as a member. *Id.* at *1, *3.

189. *See, e.g.*, Spaulding v. Honeywell Int'l, Inc., 646 S.E.2d 645, 649 (N.C. Ct. App. 2007) (explaining that the North Carolina LLC statute specifically states that "'*a member*[or] *manager . . . is not liable for the obligations of a limited liability company* solely by reason of being a member[or] manager . . . and *does not become so by participating, in whatever capacity, in the management or control of the business*'" (emphasis added by court) (quoting N.C. GEN. STAT. § 57C-3-30(a) (2005))).

190. *See, e.g.*, Brew City Redevelopment Grp., LLC v. Ferchill Grp., 714 N.W.2d 582, 590–91 (Wis. Ct. App.) (explaining that "neither members of a limited liability company nor its manager may be liable in tort, for their acts or conduct as a member or manager, to third persons"), *aff'd*, 724 N.W.2d 879 (Wis. 2006). The appellate court affirmed the trial court's dismissal of the intentional interference with the contractual relationship claim against the manager of an LLC after finding that the manager could not be liable for interference with a real estate purchase because the plaintiff failed to allege actions beyond those taken as the manager. *Id.*

191. Because Maryland has not defined the context in which a member's actions are "solely by reason" of being a member, it is helpful to discuss other principles of Maryland corporate law that may help shed light on this issue; specifically, agency law and corporate successor law are useful points of discussion.

First, agency law states that the actions of corporate officers are binding on the principal when such actions "are performed within the scope of [the agents'] authority, either express or implied." Johnson v. Maryland Trust Co., 176 Md. 557, 565, 6 A.2d 383, 386 (1939). Actions taken outside of the agent's authority and "knowledge of an agent whose interests are adverse to the principal cannot be imputed to the principal." Hecht v. Resolution Trust Corp., 333 Md. 324, 345, 635 A.2d 394, 405 (1994); P. Flanigan & Sons, Inc. v. Childs, 251 Md. 646, 654, 248 A.2d 473, 477 (1968) ("We have held that a statement made by an agent will not bind his principal until an agency is established and then only if the statement is within the scope of the agency . . . ." (citing Deane v. Big Spring Distilling Co., 138 Md. 388, 392–93, 113 A. 891, 893 (1921))); *see also* Felland Ltd. P'ship v. Digi-tel Commc'ns, LLC, 384 Md. 520, 531, 864 A.2d 1027, 1034 (2004) (exploring cases that "delineated the general rules for determining whether an employee's wrongful acts are within the scope of employment, thereby rendering the employer liable for such acts"); Lohmuller Bldg. Co. v. Gamble, 160 Md. 534, 540–41, 154 A. 41, 44 (1931) ("[K]nowledge privately acquired by any such agent, and not communicated to his principal or associates, will not be imputed to the corporation in matters in which the interest of the agent is adverse to its own, even where the agent actively participates in the transaction."). In *Bob Holding Corp. v. Normal Realty Corp.*, the Maryland Court of Appeals stated that the act of the attorney who gave notice to the third party under the direction of the corporate client must be presumed to be the corporate client's act. 233 Md. 260, 266–67, 164 A.2d 457, 460–61 (1960). In contrast, in *Hecht v. Resolution Trust Corp.*, the Maryland Court of Appeals stated that "consistent with Maryland agency law," in an adverse domination situation, directors of a corporation could not reasonably be expected to communicate knowledge of their

group of states has interpreted the phrase "solely by reason" more broadly by protecting members from personal liability for affirmative actions taken in service of the LLC.

3. Piercing the Corporate Veil

Maryland courts will generally respect the liability shield of a corporation and refuse to hold individual officers liable for an obligation of the corporation.[192] In the appropriate circumstances, however, Maryland courts will disregard the corporate form and hold individual officers liable through the doctrine of piercing the corporate veil.[193] As stated in *Bart Arconti & Sons, Inc. v. Ames-Ennis, Inc.*,[194] although a court may "disregard the corporate entity and deal with substance rather than form, as though a corporation did not exist, shareholders generally are not held individually liable for debts or obligations of a corporation except where it is necessary to prevent fraud or enforce a paramount equity."[195] The fact that a particular defendant "controlled and operated" the corporation does not by itself justify the piercing of the corporate veil to impose individual liability.[196] Maryland is more restrictive than most jurisdictions in allowing the corpo-

own wrongdoing to the business. 333 Md. at 345–46, 635 A.2d at 405 (considering certified questions from the United States District Court for the District of Maryland). For a further discussion of how agency law supports adopting a rule that protects members from personal liability when acting in the good faith service of the LLC, see *infra* Part IV.B.2.b.

Second, corporate successor law holds generally that a successor corporation is not liable for the obligations of the previous corporation subject to four specific exceptions. Nissen Corp. v. Miller, 323 Md. 613, 617, 594 A.2d 564, 565–66 (1991). A successor corporation will only be held liable for the obligations of its predecessor if (1) "'there is an express or implied agreement'"; (2) there is a consolidation or merger; (3) the successor "'is a mere continuation or reincarnation of the predecessor'"; or (4) there is fraud, a lack of good faith, or insufficient consideration. *Id.*; Baltimore Luggage Co. v. Holtzman, 80 Md. App. 282, 290, 562 A.2d 1286, 1289–90 (1989). For a more detailed discussion of how corporate successor law supports the adoption of a rule that protects members from personal liability when acting in the good faith service of the LLC, see *infra* Part IV.B.2.c.

192. Bart Arconti & Sons, Inc. v. Ames-Ennis, Inc., 275 Md. 295, 310, 340 A.2d 225, 234 (1975); Travel Comm., Inc. v. Pan American World Airways, Inc., 91 Md. App. 123, 159, 603 A.2d 1301, 1319 (1991) (explaining that there was no evidence of a failure to observe corporate formalities where officers and directors were involved with corporate activities and concluding that disregarding the corporate form could not be justified).

193. *Bart Arconti*, 275 Md. at 310, 340 A.2d at 234.

194. 275 Md. 295, 340 A.2d 225.

195. *Id.* at 310, 340 A.2d at 234 (citation omitted); *see also* Hildreth v. Tidewater Equip. Co., 378 Md. 724, 732–33, 838 A.2d 1204, 1209 (2003) (quoting the definition from *Bart Arconti*); Residential Warranty Corp. v. Bancroft Homes Greenspring Valley, Inc., 126 Md. App. 294, 306, 728 A.2d 783, 789 (1999) (same); Colandrea v. Colandrea, 42 Md. App. 421, 427–28, 401 A.2d 480, 484 (1979) (same).

196. Damazo v. Wahby, 259 Md. 627, 633–34, 270 A.2d 814, 817 (1970).

rate veil to be pierced.[197] In Maryland, the corporate veil may be pierced in two circumstances: (1) fraud or (2) enforcement of a paramount equity.[198]

a. Piercing the Corporate Veil Based on Fraud

To prove fraud so as to pierce the corporate veil, the plaintiff must prove five elements by clear and convincing evidence: (1) a material representation was false; (2) the defendant knew the statement was false or made the statement with reckless indifference to the truth; (3) the misrepresentation was meant to defraud; (4) the plaintiff justifiably relied on the misrepresentation; and (5) the plaintiff suffered damage from the misrepresentation.[199] The burden of proof is on the party alleging fraud to state clear and specific facts establishing the fraud.[200]

For example, in *Colandrea v. Colandrea*,[201] the Court of Special Appeals of Maryland held that the plaintiff had proven fraud so as to allow for the piercing of the corporate veil.[202] Upon settling their divorce, the ex-wife, the defendant, executed a stock redemption to buy out her ex-husband, the plaintiff.[203] The ex-wife then created a new company to which she transferred the assets of the previous company.[204] In reviewing the trial court's refusal to pierce the corporate veil, the Court of Special Appeals explained that the defendant's reasons for creating a new corporation were completely "devoid of merit."[205] The court concluded that "the trial court clearly erred in failing to consider [the defendant's] admission in a deposition" that the defendant "entered into the stock redemption agreement with the deliberate intention and purpose of cheating and defrauding" the plaintiff.[206] The court stated that in cases of such fraud, the corporation and the individual responsible for such conduct are liable for damages.[207] The court was willing to pierce the corporate veil be-

197. *Residential Warranty Corp.*, 126 Md. App. at 309–10, 728 A.2d at 790–91.
198. *Id.* at 306–07, 728 A.2d at 789.
199. *Colandrea*, 42 Md. App. at 428, 401 A.2d at 484.
200. Ace Dev. Co. v. Harrison, 196 Md. 357, 367, 76 A.2d 566, 570 (1950).
201. 42 Md. App. 421, 401 A.2d 480.
202. *Id.* at 428, 401 A.2d at 484.
203. *Id.* at 422–23, 401 A.2d at 481–82.
204. *Id.* at 423–24, 401 A.2d at 482.
205. *Id.* at 429, 401 A.2d at 485.
206. *Id.* at 430–32, 401 A.2d at 485–86.
207. *Id.* at 432, 401 A.2d at 486 ("Agents of a corporation . . . cannot hide behind the corporate shield and say they were acting solely as the agents of the corporation." (alteration in original) (quoting Ace Dev. Co. v. Harrison, 196 Md. 357, 367, 76 A.2d 566, 570 (1950))).

cause the evidence which the plaintiff ex-husband had presented met the elements of fraud by clear and convincing evidence—the ex-wife had abused the corporate form by using the liability shield for the sole purpose of committing fraud.[208]

b. Piercing the Corporate Veil to Enforce a Paramount Equity

The general rule regarding enforcement of a paramount equity is that a court may pierce the corporate veil when a single individual owns substantially all the stock of a corporation in combination with other factors clearly showing a disregard for the corporate form.[209] Some of the other factors that a court may consider in deciding to pierce the corporate veil based on equity include (1) whether the corporation was undercapitalized, failed to recognize the corporate form or to issue stock or pay dividends, or failed to operate the business with a profit; (2) whether there was a commingling of corporate and personal assets; (3) whether there were nonfunctioning corporate officers; (4) whether the corporation was insolvent when the transaction took place; and (5) whether corporate records were maintained.[210] Although Maryland case law allows for the corporate veil to be pierced when a paramount equity is present, arguments "for reasons other than fraud" have virtually always failed in Maryland courts.[211]

For instance, in *Hildreth v. Tidewater Equipment Co.*,[212] the Court of Appeals held that a corporation's failure to satisfy its obligations under a contract did not trigger the paramount equity necessary to justify piercing the corporate veil.[213] The court stated that the con-

208. *Id.* at 432, 401 A.2d at 486–87.

209. *See* Residential Warranty Corp. v. Bancroft Homes Greenspring Valley, Inc., 126 Md. App. 294, 307, 728 A.2d 783, 789 (1999). The court in *Residential Warranty Corp.* stated,

> [W]hen substantial ownership of all the stock of a corporation in a single individual is combined with other factors clearly supporting disregard of the corporate fiction on grounds of fundamental equity and fairness, courts have experienced "little difficulty" and have shown no hesitancy in applying what is described as the "alter ego" or "instrumentality" theory in order to cast aside the corporate shield and to fasten liability on the individual stockholder.

Id. (quoting Travel Comm., Inc. v. Pan American World Airways, Inc., 91 Md. App. 123, 158–59, 603 A.2d 1301, 1318 (1992)).

210. Hildreth v. Tidewater Equip. Co., 378 Md. 724, 735–36, 838 A.2d 1204, 1210–11 (2003); *see also Residential Warranty Corp.*, 126 Md. App. at 307, 728 A.2d at 789 (articulating a similar, but slightly different, list of factors).

211. *Residential Warranty Corp.*, 126 Md. App. at 307, 728 A.2d at 789 (quoting *Travel Comm., Inc.*, 91 Md. App. at 156, 603 A.2d at 1317) (internal quotation marks omitted).

212. 378 Md. 724, 838 A.2d 1204.

213. *Id.* at 734–39, 838 A.2d at 1210–13.

duct in *Bart Arconti*,[214] which was clearly undertaken by a corporate officer for the purpose of causing the corporation to "evade a legal obligation," did not justify piercing the corporate veil.[215] With *Bart Arconti* as precedent, the conduct in the instant case of a corporate officer failing to register a foreign corporation to do business within the State of Maryland did not rise to the required level of paramount equity.[216] Thus, although Maryland law allows for piercing of the corporate veil to enforce a paramount equity, Maryland courts have not found sufficient facts to justify piercing the corporate veil for this reason.[217]

4. Piercing the LLC Veil

Maryland courts have not yet addressed whether the doctrine of piercing the corporate veil applies with equal force to LLCs.[218] Other jurisdictions, however, have addressed this issue and concluded that the doctrine does in fact apply similarly to LLCs. For example, in *Westmeyer v. Flynn*,[219] an Illinois appellate court, applying Delaware law, held that the doctrine of piercing the corporate veil applies in similar circumstances to LLCs.[220] The court stated that LLCs were

214. Bart Arconti & Sons, Inc. was a subcontractor that defaulted on contracts for three construction projects. Bart Arconti & Sons, Inc. v. Ames-Ennis, Inc., 275 Md. 295, 303–05, 340 A.2d 225, 230–31 (1975). The company's directors then allowed the company to become "dormant" while allowing two other corporations to use Arconti's equipment without compensation, make loans in Arconti's name, and transfer Arconti's insurance policy. *Id.* at 304–05, 340 A.2d at 231. The trial court found that the only purpose for these actions was to "'evade legal obligations'" owed by Arconti. *Id.* at 305, 340 A.2d at 231. Still, the appellate court stated that it was not "aware of any Maryland case law" that supported piercing the corporate veil "merely because [the court] wished to prevent an 'evasion of legal obligations'—absent evidence of fraud or similar conduct." *Id.* at 311–12, 340 A.2d at 235.

215. *Hildreth*, 378 Md. at 738–39, 838 A.2d at 1212.

216. *Id.* at 728, 739, 838 A.2d at 1206, 1212–13. The court explained that the Court of Special Appeals had erred in justifying the imposition of liability on the sole shareholder for "disregarding the corporate existence 'in order to prevent the evasion of legal obligations,'" and held that this was not "a separate basis for piercing a corporate veil." *Id.* at 737–39, 838 A.2d at 1211–12. The court rejected piercing the corporate veil on two bases. First, "nothing in [the] record," the court stated, justified piercing the corporate veil for the sole shareholder's use of the corporation as "'a mere shield for the perpetration of fraud.'" *Id.* at 734, 838 A.2d at 1210. Second, nothing in the record supported piercing the corporate veil for failure to observe the corporate entity, or under the "alter ego" doctrine. *Id.* at 735–37, 838 A.2d at 1210–11.

217. *See* Turner v. Turner, 147 Md. App. 350, 429, 809 A.2d 18, 64 (2002); Residential Warranty Corp. v. Bancroft Homes Greenspring Valley, Inc., 126 Md. App. 294, 307, 728 A.2d 783, 789 (1999).

218. Allen v. Dackman, 413 Md. 132, 153–54, 991 A.2d 1216, 1228–29 (2010).

219. 889 N.E.2d 671 (Ill. App. Ct. 2008).

220. *Id.* at 678 ("[U]nder Delaware law, just as with a corporation, the corporate veil of an LLC may be pierced, where appropriate. Therefore, the granting of the defendants'

created to provide the same tax treatment as partnerships, and the same liability shield as corporations.[221] Thus, the court reasoned, the liability shield of an LLC should be treated the same as the liability shield of a corporation.[222] That is, while the members of an LLC are not generally liable for the obligations of the LLC, the veil of the LLC may be pierced in the appropriate circumstances.[223]

Courts in Arizona,[224] Colorado,[225] Connecticut,[226] Georgia,[227] Indiana,[228] Louisiana,[229] New York,[230] and Wyoming[231] have used similar reasoning in applying the doctrine of piercing the corporate veil to LLCs.

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motion to dismiss on the ground that the doctrine of piercing the corporate veil did not apply to the defendants' LLC was error.").

221. *Id.* at 677.

222. *Id.*

223. *Id.* at 677–78.

224. *Cf., e.g.*, Gray v. Shaw, No. 1 CA-CV 06-0298, 2007 WL 5439746, at *11 (Ariz. Ct. App. Aug. 9, 2007) ("Assuming without deciding that 'piercing the corporate veil' applies to LLCs," but finding that appellants "ha[d] not presented evidence of a question of fact as to whether the doctrine should apply in this case").

225. *See, e.g.*, Great Neck Plaza, L.P. v. Le Peep Restaurants, LLC, 37 P.3d 485, 490 (Colo. App. 2001) (applying the doctrine of piercing the corporate veil to an LLC based on the patterns of ownership and the determination that the entities were interchangeable).

226. *See, e.g.*, Litchfield Asset Mgmt. Corp. v. Howell, 799 A.2d 298, 310, 316 (Conn. App. Ct. 2002) (concluding that the trial court properly disregarded the LCCs' liability shields after finding "sufficient evidence to pierce the corporate veils"); *see also, e.g.*, KLM Indus., Inc. v. Tylutki, 815 A.2d 688, 689–90 n.2 (Conn. App. Ct. 2003) ("[W]e agree with the [trial] court that the determination of whether to pierce the corporate veil of a stock corporation or to disregard the protections afforded a limited liability company requires the same analysis."); Pompilli v. Pro-Line Painting, No. CV044001774, 2005 WL 1433185, at *2 (Conn. Super. Ct. May 13, 2005) (citing *Litchfield*, 799 A.2d at 310) ("The doctrine of piercing the corporate veil, as applied to corporations, also applies to a limited liability company.").

227. *See, e.g.*, Bonner v. Brunson, 585 S.E.2d 917, 918 (Ga. Ct. App. 2003) ("A court may disregard the separate LLC entity and the protective veil it provides to an individual member of the LLC when that member . . . conducts his personal and LLC business as if they were one by commingling the two on an interchangeable or joint basis . . . .").

228. *See, e.g.*, Troutwine Estates Dev. Co., LLC v. Comsub Design & Eng'g, Inc., 854 N.E.2d 890, 898–99 (Ind. Ct. App. 2006) ("Because the Indiana Business Flexibility Act provides protections to limited liability companies like those of corporations, to circumvent those protections we apply an analysis similar to that for determining the personal liability of a corporation's officers.").

229. *See, e.g.*, Hamilton v. AAI Ventures, L.L.C., 768 So. 2d 298, 301–03 (La. Ct. App. 2000) (considering whether to apply the doctrine of piercing the corporate veil to an LLC).

230. *See, e.g.*, Retropolis, Inc. v. 14th Street Dev. LLC, 797 N.Y.S.2d 1, 2 (App. Div. 2005) (using the doctrine of piercing the corporate veil in the context of an LLC).

231. *See, e.g.*, Kaycee Land & Livestock v. Flahive, 46 P.3d 323, 327 (Wyo. 2002) ("We can discern no reason, in either law or policy, to treat LLCs differently than we treat corporations.").

III. THE COURT'S REASONING

In *Allen v. Dackman*,[232] the Court of Appeals of Maryland held that a member of an LLC could be held personally liable for the lead paint poisoning suffered by illegal occupants of a dwelling owned by the LLC.[233] The court held that the trial court erred in granting summary judgment in favor of Dackman because a reasonable trier of fact could find that Dackman, an LLC member, controlled the property at issue and personally participated in the alleged tort.[234] The court's reasoning was broken down into four separate steps: (1) whether the lower courts had correctly interpreted the Housing Code,[235] (2) whether Dackman could be considered an owner of the property by controlling the title,[236] (3) whether Dackman's position as a member of an LLC protected him from individual liability,[237] and (4) whether Dackman owed a duty to the petitioners.[238]

Judge Greene, writing for the majority, primarily focused his opinion on the Housing Code to determine whether the lower courts were correct in finding that Dackman could not be held liable as a matter of law.[239] At the outset, the court stated that the Mayor and the Baltimore City Council intended the Housing Code to be "'liberally construed to effectuate [its] purposes.'"[240] The court noted that section 310(a) of the Housing Code required all owners of property within the city to be in compliance with all provisions of the Housing Code.[241] The Housing Code, the court continued, further defined

232. 413 Md. 132, 991 A.2d 1216 (2010).

233. 413 Md. at 141–42, 991 A.2d at 1221 (concluding "that the trial court erred when it granted summary judgment in favor of [Dackman]").

234. *Id.* at 160, 991 A.2d at 1232–33.

235. *Id.* at 142–45, 991 A.2d at 1221–23.

236. *Id.* at 145–52, 991 A.2d at 1223–28.

237. *Id.* at 152–56, 991 A.2d at 1228–30.

238. *Id.* at 156–59, 991 A.2d at 1230–32.

239. *Id.* at 141–42, 991 A.2d at 1221 (explaining that the court must interpret the Housing Code to decide this case). Judge Greene was joined by Chief Judge Bell, Judge Battaglia, Judge Murphy, and Judge Barbera.

240. *Id.* at 143, 991 A.2d at 1222 (alteration in original) (quoting HOUSING CODE § 103(b)). Interpreting the Housing Code, the court found that the purposes of the Housing Code were to (1) provide minimum requirements for the protection of the health and safety of owners and operators of dwellings, (2) establish standards to make dwellings safe, sanitary, and fit for human habitation, and (3) assign responsibilities upon owners, operators, and occupants of dwellings. *Id.* (quoting HOUSING CODE § 103(a)).

241. *Id.* at 144, 991 A.2d at 1223 (stating that "any 'owner or operator of a property subject to this Code shall be responsible for compliance with all of the provisions of the Code'" (quoting HOUSING CODE § 310(a))). The specific provision that Dackman was accused of violating states that "'every building . . . used or occupied as a dwelling . . . be kept in good repair, in safe condition, and fit for human habitation.'" *Id.* at 145, 991 A.2d at 1223 (quoting HOUSING CODE § 702(a)). The court highlighted that this requirement of

"owner" as any person or entity who "owns, holds, or controls" title to the property.[242] The court reasoned that the City Council specifically defined the term "owner" as not only the person or entity owning title but also as those who hold or control title.[243]

Because the parties agreed that Dackman did not own or hold the title to the property, the court considered whether Dackman exercised "control" over the title to the property.[244] The court found that the term "control" meant that the person or entity in question must have had an ability to change or affect the title to the property at issue.[245] The court explained that a reasonable trier of fact could have answered this question in the affirmative because Dackman (1) was responsible for the day-to-day operations of Hard Assets, (2) executed the deed certificate for Hard Assets to acquire the property, (3) signed the complaint seeking to remove the petitioners from the property, and (4) signed the deed when Hard Assets sold the property.[246] The court further stated that even if Dackman did not actually do these things, the trier of fact could find that Dackman had the "ability" to do so, which would have been sufficient to establish control.[247]

"good repair and safe condition" includes that "'[a]ll walls, ceilings, woodwork, doors and windows shall be kept clean and free of any flaking, loose, or peeling paint and paper.'" *Id.* (quoting HOUSING CODE § 703(c)(3)).

242. *Id.* at 144–45, 991 A.2d at 1223 (explaining that an owner is "'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'" (quoting HOUSING CODE § 105(jj))). The Allens specifically declined to advance the argument on appeal that Dackman was an operator under the Housing Code. *Id.* at 144 n.10, 991 A.2d at 1223 n.10.

243. *Id.* at 148, 991 A.2d at 1225 ("[T]he Housing Code by its terms showed that the enacting body—in this case, the City Council—intended for the term 'owner' to have a broader meaning than it does in the traditional sense.").

244. *Id.* at 145–52, 991 A.2d at 1223–28. The trial court, the court explained, found that Dackman could not have been an owner of the property, *see supra* notes 26–27, and the Court of Special Appeals affirmed the trial court's judgment, *see supra* notes 30–32. R R

245. *Allen*, 413 Md. at 149, 991 A.2d at 1226 (explaining that "[t]his definition is consistent with the common definition of the term 'control'" (citing BLACK'S LAW DICTIONARY 353 (8th ed. 2004))).

246. *Id.* The court found the fact that Dackman never visited the property or intended to lease the property to be irrelevant to the determination of whether Dackman was an owner of the property. *Id.* at 151, 991 A.2d at 1227. In considering whether Dackman acted "reasonably" to ensure compliance with the Housing Code, the trier of fact, the court noted, could consider, for example, that the Allens were occupying the property illegally. *Id.* at 151–52 (explaining that "[t]he Court is not in a position . . . to determine whether [Dackman's] actions were reasonable" because "[b]efore us is whether the trial court properly granted [Dackman's] motion for summary judgment").

247. *Id.* at 150, 991 A.2d at 1226.

Next, the court found that Dackman's position as a member in an LLC did not protect him from possible liability in this case.[248] Although generally members of an LLC are not liable for torts committed by the LLC, individuals may be liable for torts that they "'personally commit[,] . . . inspire[,] or participate[ ] in, even though performed in the name of an artificial body.'"[249] The court explained that the MLLCA only protects members of an LLC from liability "solely by reason" of being a member of an LLC.[250] Therefore, the member of an LLC may be liable for the torts he personally commits, inspires, or participates in because the member personally committed a wrong, and this wrong is not solely by reason of being a member of an LLC.[251]

Turning to the facts of the case, the court concluded that the trier of fact could find Dackman personally liable for the alleged injuries because the evidence showed that Dackman was the only individual who ran the day-to-day operations of Hard Assets.[252] These facts were sufficient evidence for a trier of fact to find that Dackman, an LLC member, committed, inspired, or participated in a violation of the Housing Code.[253]

Then, the court stated that the Housing Code did impose a duty upon Dackman in regard to the protection of the petitioners.[254] The court explained that the plaintiff must prove only two things "to establish a *prima facie* case of negligence under the Housing Code: '(a) the violation of a statute or ordinance designed to protect a specific class

248. *Id.* at 152, 991 A.2d at 1228.

249. *Id.* at 152–53, 991 A.2d at 1228 (quoting Metromedia Co. v. WCBM Md., Inc., 327 Md. 514, 520, 610 A.2d 791, 794 (1992)). The court also stated that an individual may be personally liable if that person "'is present on a daily basis during commission of the tort'" and orders the commission of the tort. *Id.* (quoting MaryCLE v. First Choice, 166 Md. App. 481, 528, 890 A.2d 818, 845 (2006)) (explaining that the court agreed with other jurisdictions that have applied these principles to members of an LLC).

250. *Id.* at 154, 991 A.2d at 1229.

251. *Id.* The court's entire examination of any potential conflict between the Housing Code and the MLLCA is contained within one footnote of the opinion. *See id.* at 154 n.15, 991 A.2d at 1229 n.15 (stating that the court rejected the argument that this interpretation of the Housing Code and the MLLCA were inconsistent).

252. *Id.* at 155–56, 991 A.2d at 1230. The court then proceeded to present a list of hypotheticals in which the reasonable trier of fact could find that Dackman committed, inspired, or participated in the alleged tort: Dackman could have "personally directed someone else to inspect or maintain the property," "directed someone else not to inspect or maintain the property," or "may have chosen not to direct anyone to inspect or maintain the property." *Id.*

253. *Id.* at 154 n.15, 155–56, 991 A.2d at 1229 n.15, 1230.

254. *Id.* at 156–58, 991 A.2d at 1230–31. Dackman argued that the Housing Code did not impose a duty upon owners in regard to the illegal occupants or a duty upon owners who did not lease or intend to lease the dwelling. *Id.* at 156, 991 A.2d at 1230.

of persons which includes the plaintiff, and (b) that the violation proximately caused the injury complained of.'"[255] After looking to the purpose of the Housing Code, the court concluded that the Housing Code clearly intended to protect all "'occupants of dwellings'" in the City of Baltimore.[256] This conclusion was supported by the Housing Code's definition of the term "occupant" as the actual person who uses the dwelling.[257] This reasoning led the court to hold that Dackman owed the petitioners a duty of care regardless of whether the petitioners had occupied the premises illegally.[258] This same reasoning also led the court to hold that Dackman owed the petitioners a duty of care regardless of whether Dackman ever intended to lease the dwelling.[259] The court recognized that this reasoning would impose a "far-reaching duty" upon the owners of property but nonetheless concluded that such an interpretation was supported by "the explicit intent of the City Council."[260]

Judge Harrell dissented, arguing that Dackman never had "'an ability to change or affect'" title in his individual capacity.[261] Judge Harrell agreed with the court that the key issue to determining the outcome of this case was whether Dackman qualified as an owner under the Housing Code.[262] The main distinction for Judge Harrell, however, was whether Dackman had "'an ability to change or affect'" the title "*in his individual capacity.*"[263] Judge Harrell argued that any

255. *Id.* (quoting Brooks v. Lewin Realty III, Inc., 378 Md. 70, 79, 835 A.2d 616, 621 (2003)). After these steps have been established, "the trier of fact must determine whether the defendant acted reasonably under the circumstances." *Id.* (citing *Brooks*, 378 Md. at 79, 835 A.2d at 621).

256. *Id.* at 156–57, 991 A.2d at 1230 (emphasis omitted) (quoting HOUSING CODE § 103(a)(1)) ("The Housing Code specifically stated that it was intended to 'establish and maintain basic minimum requirements, standards, and conditions essential for the protection of the health, safety, morals, and general welfare of the public and . . . *occupants of dwellings* in the City of Baltimore.'" (emphasis added by court) (quoting HOUSING CODE § 103(a)(1))).

257. *Id.* ("The Code defined an 'occupant' as 'the person who actually uses or has possession of the premises.'" (quoting HOUSING CODE § 105(gg))).

258. *Id.* at 157–58, 991 A.2d at 1231. The court also explained that the usual common law rule that a landowner owes a lesser standard of care to a trespasser is inapplicable in this case because of the existence of the statutorily prescribed duty imposed by Housing Code. *Id.* at 157, 991 A.2d at 1231.

259. *Id.* at 158–59, 991 A.2d at 1232. The court stated that although the Housing Code is most often applied against landlords, no court opinion has ever stated that the duties imposed by the Housing Code are limited to landlords who rented property. *Id.* at 159 n.20, 991 A.2d at 1232 n.20.

260. *Id.* at 159 n.22, 991 A.2d at 1232 n.22.

261. *Id.* at 160–61, 991 A.2d at 1233 (Harrell, J., dissenting). Judge Harrell was joined by Judge Adkins.

262. *Id.* at 160, 991 A.2d at 1233.

263. *Id.* at 160–61, 991 A.2d at 1233.

ability which Dackman possessed to change or affect title arose solely by virtue of his position as a member of Hard Assets.[264]

Judge Harrell explained that the actions undertaken by Dackman on behalf of Hard Assets "cannot form the basis for the conclusion that [Dackman], *in his individual capacity*, possessed the 'ability to change or affect' the title to the property."[265] Instead, Judge Harrell stated that all corporate entities must act by necessity through an actual person.[266] Hard Assets was the sole party capable of changing or affecting title to the property.[267] Therefore only Hard Assets—not Dackman—was the owner of the property, and Dackman could not be subject to individual liability.[268]

IV. ANALYSIS

In *Allen v. Dackman*, the court held that an individual member of an LLC could be personally liable under the Housing Code if the trier of fact finds that the member was the "owner" of property by having the ability to change or affect the title even though the property was purchased in the name of the LLC and finds that the member "personally committed, inspired or participated in" the alleged tort.[269] The court's holding casts doubt upon the liability shield of an LLC by exposing individual members to personal liability for the obligations of the LLC. The court could have properly balanced the competing interests of tort and corporate law by instead creating a three part analysis: (1) interpreting the Housing Code to require the legal ability to change or affect title,[270] (2) interpreting the MLLCA to protect members from liability when acting in the good faith service of the LLC,[271] and (3) applying the well-settled doctrine of piercing the corporate veil to LLCs.[272] A member who fails any of these three steps could rightfully be held personally liable.[273] Although this reasoning

264. *Id.* at 162, 991 A.2d at 1233–34. Likewise, "any actions undertaken by [Dackman] regarding the title to the subject property were undertaken *solely in his capacity as a member of Hard Assets*." *Id.*, 991 A.2d at 1234.

265. *Id.* The actions taken by Dackman included signing the deed when Hard Assets acquired the property and when Hard Assets sold the property. *Id.*

266. *Id.* ("[A]lthough Hard Assets acted, of necessity, through one of its individual members, namely, [Dackman], Hard Assets nevertheless was the entity that maintained the 'ability to change or affect' the title to the property.").

267. *Id.*

268. *Id.*

269. *Id.* at 141–42, 145, 991 A.2d at 1221, 1223–24 (majority opinion).

270. *See infra* Part IV.A.1.

271. *See infra* Part IV.B.2.

272. *See infra* Part IV.C.

273. *See infra* Part IV.A–C.

would have led to a different outcome in the instant case, this analysis would have properly weighed the competing interests and would hold an LLC member personally liable in cases with the appropriate facts.

A. Dackman Should Not Be Held Personally Liable Under the Housing Code

The court first analyzed whether Dackman was an owner under the Housing Code in order to impose personal liability.[274] The court held that a reasonable trier of fact could find that Dackman was an owner because he had the ability to change or affect title to the property in question.[275] In so holding, the court improperly exposes individual members of an LLC to personal liability by reading the term "control" broadly to encompass individuals who act for the LLC.[276] The court should have properly imposed the tort liability on the owner of property by defining control as requiring the *legal* ability to change or affect title.[277] Applying this definition to the current case would result in finding that Dackman was not an owner under the Housing Code and that a prima facie case of negligence had not been shown.[278]

1. Dackman Should Not Be Considered an Owner Under the Housing Code

The court should have properly imposed tort liability on the true owner of the property by interpreting the term "control" as requiring the *legal* ability to change or affect title. The majority and the dissent correctly stated that a person controls title by having an ability to change or affect the title.[279] The majority, however, ignored the fact that Dackman never possessed any ability, as an individual, to change

274. *See supra* text accompanying notes 239–47. R

275. Allen v. Dackman, 413 Md.132, 145, 991 A.2d 1216, 1223–24 (2010).

276. *See infra* Part IV.A.1.

277. *See infra* Part IV.A.1. Those who have the "legal ability" to change or affect title include all people or entities who own the fee simple or some lesser estate in the property. *See, e.g.*, Dyer v. Otis Warren Real Estate Co., 371 Md. 576, 583, 810 A.2d 938, 942–43 (2002) (explaining that a mortgagee, a mortgagor, and the holder of a ground rent lease may all properly be understood as the legal owner of property). There may in fact be "'different estates in the same property, vested in different persons, and each be an owner thereof.'" *Id.*, 810 A.2d at 942 (quoting Weinberg v. Balt. & Annapolis R.R. Co., 200 Md. 160, 166, 88 A.2d 575, 577–78 (1888)) (internal quotation marks omitted).

278. *See infra* Part IV.A.2.

279. *Allen*, 413 Md. at 160, 991 A.2d at 1233 (Harrell, J., dissenting) ("I agree with the Majority Opinion that the correct determination as to whether [Dackman] qualifies as an 'owner' . . . depends necessarily upon whether [Dackman] had 'an ability to change or affect' the title to the property . . . .").

or affect the title, while the dissent highlighted this.[280] Hard Assets was at all relevant times the only entity that ever possessed the *legal* ability to change or affect title.[281]

Applying the reasoning of *Shipley v. Perlberg*[282] and *Dyer v. Otis Warren Real Estate Co.*,[283] it is possible to support both the rule of the majority and the dissent. On the one hand, these cases most clearly support the dissent's rule that an owner must have the legal ability to control title.[284] Similar to the corporation in *Shipley*, at all relevant times Hard Assets owned the property in question.[285] Similar to the leasing agent in *Dyer*, Dackman was merely complying with state law when he took action with regard to the property.[286] Also, no evidence showed that Dackman had any knowledge of the alleged wrongful conduct.[287] Thus, holding Dackman, an LLC member, liable when only the LLC had the legal ability to control title appears inconsistent. On the other hand, *Shipley* and *Dyer* may be distinguishable from *Allen*. *Shipley* contained facts showing that the corporate director did not handle the rental properties or the management of the company.[288] In *Dyer*, the leasing agent was a mere broker who lacked "express au-

280. *Id.* at 160–62, 991 A.2d at 1233–34. Dackman never possessed this ability because at all relevant times, Hard Assets was the only entity that bought and was capable of legally selling the property. *Id.* at 162, 991 A.2d at 1234.

281. *Id.*

282. *See supra* text accompanying notes 51–58. R

283. *See supra* text accompanying notes 59–67. R

284. *See Allen*, 413 Md. at 162, 991 A.2d at 1234 (Harrell, J., dissenting).

285. *Compare* Shipley v. Perlberg, 140 Md. App. 257, 277, 780 A.2d 396, 407 (2001) ("The evidence is undisputed that Barbara Realty Corporation owned the subject property during the relevant time period. There is no evidence that Perlberg had title to the subject property or exercised ownership in the manner contemplated by the Code."), *abrogated by Allen*, 413 Md. 132, 991 A.2d 1216, *with Allen*, 413 Md. at 162, 991 A.2d at 1234 (Harrell, J., dissenting) ("It is undisputed that Hard Assets, LLC, acquired, held, and sold the title to the subject property.").

286. *Compare* Dyer v. Otis Warren Real Estate Co., 371 Md. 576, 589–91, 810 A.2d 938, 946–47 (2002) (explaining that the acts of the leasing agent do not constitute control because he "was merely complying with Federal disclosure requirements," delivering possession with an agreement to purchase property, delivering certain documents, and could possibly receive a commission), *with Allen*, 413 Md. at 149, 991 A.2d at 1226 (majority opinion) (explaining that Dackman executed the deed certificate to buy the property, the deed certificate to sell the property, and the complaint removing the Allens from the property).

287. *Allen*, 413 Md. at 139–40, 991 A.2d at 1220 (citing Allen v. Dackman, 184 Md. App. 1, 4–6, 964 A.2d 210, 212–13 (2009)); *see also Shipley*, 140 Md. App. at 278, 780 A.2d at 408 ("[A] plaintiff must show that the individual defendant at least had knowledge of and acquiesced in the wrong.").

288. *Shipley*, 140 Md. App. at 278, 780 A.2d at 407 ("There was no evidence that [the corporate officer] had 'charge, care, or control' over the property. [The corporate officer] testified that he was not involved in renting properties and had never visited the subject property.").

thority to sell the property."[289] In *Allen*, however, the court held that a reasonable trier of fact could find that Dackman was an owner because he was responsible for the day-to-day affairs of Hard Assets, executed the deed certificate to acquire the property, signed the complaint seeking to remove the Allens from the property, and signed the deed when the LLC sold the property.[290]

Based on *Shipley* and *Dyer*, however, the dissent's rule of what is required is more persuasive. To the extent these precedents conflict with the dissent's rule that requires an owner to have the *legal* ability to change or affect title, they should be abandoned. The *Allen* majority disagreed with the dissent's rule based on canons of statutory interpretation that require reading the statutory language in a way that does not render any part of the statute "'superfluous or nugatory.'"[291] The *Allen* majority believed the additional word "control" must have evidenced an intent by the City Council to apply the term "owner" to a wider group of individuals beyond the traditional understanding of this term.[292] The court reasoned that this wider group of individuals includes all people with the ability to change or affect title.[293] It is equally plausible, however, that adding "control" to the definition of owner, under section 105(jj) of the Housing Code, was evidence of the City Council's intent to expand the definition of owner to all individuals with the legal ability to change or affect title.[294] The court, for example, has treated a mortgagee as the owner of the property.[295] The court has explained that the mortgagor also possesses the legal ability to change or affect title.[296] This example demonstrates that inclusion of the term "control" could reasonably evidence an intent by the City Council to define an owner under the Housing Code as all individuals who have the legal ability to change or affect title.[297] This

289. *Dyer*, 371 Md. at 590–91, 810 A.2d at 946–47.

290. *Allen*, 413 Md. at 149, 991 A.2d at 1226.

291. *Id.* at 148, 991 A.2d at 1225 (quoting *Dyer*, 371 Md. at 581, 810 A.2d at 941).

292. *Id.* at 148–49, 991 A.2d at 1225–26.

293. *Id.*

294. "'An owner is not necessarily one owning the fee-simple, or one having in the property the highest estate it will admit of. One having a lesser estate may be an owner, and, indeed, there may be different estates in the same property, vested in different persons, and each be an owner thereof.'" *Dyer*, 371 Md. at 583, 810 A.2d at 942 (emphasis omitted by court) (quoting Weinberg v. Balt. & Annapolis R.R. Co., 200 Md. 160, 166, 88 A.2d 575, 577–78 (1952)) (internal quotation marks omitted).

295. *Id.* (citing Mayor of Hagerstown v. Groh, 101 Md. 560, 563, 61 A. 467, 468 (1905)).

296. *Id.*, 810 A.2d at 942–43 (citing IA Constr. Corp. v. Carney, 341 Md. 703, 716–17, 672 A.2d 650, 657 (1996)). In addition, the court has stated that the holder of a ground rent lease is considered a legal owner of property. *Id.*, 810 A.2d at 943.

297. *See supra* note 294. R

interpretation of the term "control" within the Housing Code does not render the statutory language superfluous.

Interpreting the term "control" as requiring the legal ability to change or affect title is supported by a comparison of sections 310(a) and 310(b) of the Housing Code.[298] Section 310(b) specifically "addresses the liability of individual officers and directors of a corporation for violation of the Code."[299] To prove a violation of the Housing Code under section 310(b), the plaintiff must show that the officer or director "had knowledge of and acquiesced in" the wrongful act.[300] Therefore, holding an individual personally liable under section 310(a), which directs liability for being an owner or operator of the property, for merely acting as an officer or director would be inconsistent with the knowledge requirement of section 310(b).[301] Interpreting the term "control" within section 310(a) to require the legal ability to change or affect title would solve this inconsistency. Hard Assets was at all relevant times the entity that maintained the legal ability to change or affect title to the subject property.[302] Hard Assets, therefore, could have been held liable under section 310(a) as an owner of the property even without knowledge of the alleged violation.[303] Because Dackman, as an individual, never possessed the legal ability to change or affect title to the subject property, he is not an owner of the property and should not be held liable under section 310(a).[304]

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298. *Compare* HOUSING CODE § 310(a) ("Any person who is either an owner or operator of a property subject to this Code shall be responsible for compliance with all of the provisions of the code."), *with id.* § 310(b) ("Whenever a corporation shall violate . . . this Code, such violation shall be deemed to be also that of the individual directors, officers, or agents of such corporation who shall have authorized, ordered, or done any of the acts . . . or who shall knowingly have acquiesced in any failure to act . . . .").

299. Shipley v. Perlberg, 140 Md. App. 257, 278, 780 A.2d 396, 408 (2001), *abrogated by* Allen v. Dackman, 413 Md. 132, 991 A.2d 1216 (2010).

300. *Id.* ("To prove liability under section 310(b), a plaintiff must show that the individual defendant at least had knowledge of and acquiesced in the wrong committed.").

301. *Id.* ("To hold a person liable under section 310(a) merely because he or she was involved in setting up a corporation, or acted as officer or director, would be inconsistent with the requirements of section 310(b).").

302. *Allen*, 413 Md. at 162, 991 A.2d at 1234 (Harrell, J., dissenting).

303. *See* Brooks v. Lewin Realty III, Inc., 378 Md. 70, 72, 835 A.2d 616, 617 (2003) (stating that the owner of property, in this case a Baltimore City landlord, may be held liable under the Housing Code without knowledge of the alleged violation).

304. *Cf. Shipley*, 140 Md. App. at 279, 780 A.2d at 408 ("We hold, therefore, that [the corporate officer] is not liable under section 310(a) of the Baltimore City Code."). Dackman, therefore, could only have been held liable under section 310(b) as an officer or director if he participated in or had knowledge of and acquiesced in the wrongful conduct.

Adopting an interpretation of the term "owner" to include all individuals who have the legal ability to change or affect title is also supported by the underlying theory of agency law. It is a well settled principle of agency law that corporations are incapable of acting by themselves and therefore require the action of individuals.[305] The majority's reasoning, however, ignores that all business entities must necessarily act through human beings.[306] Dackman, like the leasing agent in *Dyer*, was an agent of Hard Assets who was acting with the purpose of bringing to fruition the desires of the LLC.[307] Agency law provides that actions taken by an agent within the agent's express authority to bind the principal are properly understood as the actions of the principal.[308] Dackman's actions taken within his authority as an agent of Hard Assets are properly understood as actions of Hard Assets, not actions of Dackman as an individual.[309] Simply because Dackman was an agent of Hard Assets with authority to sell the property on behalf of Hard Assets does not make Dackman, as an individual, an owner of the property.[310] At all relevant times, Hard Assets was the sole owner of the property because Hard Assets was the sole entity that had the legal ability to change or affect title and, of necessity, had to act through Dackman.[311]

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305. *See* Bob Holding Corp. v. Normal Realty Corp., 223 Md. 260, 266, 164 A.2d 457, 460 (1960) (noting that a corporation can act only through agents).

306. *Allen*, 413 Md. at 162, 991 A.2d at 1233–34 (Harrell, J., dissenting) ("The Majority Opinion, however, ignores the fact that any ability possessed by [Dackman] to 'change or affect' the title to the property came *solely by virtue of his position as a member of Hard Assets, LLC*.").

307. *See id.*, 991 A.2d at 1234 ("[A]ny actions undertaken by [Dackman] regarding the title to the subject property were undertaken *solely in his capacity as a member of Hard Assets*."); Dyer v. Otis Warren Real Estate Co., 371 Md. 576, 590–91, 810 A.2d 938, 946–47 (explaining that the defendant was a leasing agent of the subject property and delivered certain documents to the plaintiff but did not have the necessary control over the property).

308. Johnson v. Md. Trust Co., 176 Md. 557, 565, 6 A.2d 383, 386 (1939) ("[T]he acts of corporate officers and agents are binding upon the principal when, and only when, they are performed within the scope of their authority, either express or implied."); *see supra* note 191. **R**

309. *Cf. Johnson*, 176 Md. at 565, 6 A.2d at 386; *Allen*, 413 Md. at 149, 991 A.2d at 1226 (majority opinion) (explaining that the actions taken by Dackman were within his scope of authority as a director of Hard Assets).

310. *See Allen*, 413 Md. at 162, 991 A.2d at 1234 (Harrell, J., dissenting) ("The actions undertaken by [Dackman] on behalf of Hard Assets . . . cannot form the basis for the conclusion that [Dackman], *in his individual capacity*, possessed the 'ability to change or affect' the title to the property.").

311. *Id.* ("[Dackman] may not be held liable personally to [the Allens] because he does not qualify, in his individual capacity, as an 'owner' within the meaning of § 310(a) of the . . . Housing Code.").

2. Because Dackman Did Not "Control" the Property, There Was No Showing of a Prima Facie Case of Negligence

Properly interpreting the term "control" as requiring the legal ability to change or affect title would negate the prima facie case of negligence against Dackman. A prima facie case of negligence under the Housing Code requires a showing of two elements: "(a) the violation of a statute or ordinance designed to protect a specific class of persons which includes the plaintiff, and (b) that the violation proximately caused the injury complained of."[312] This could not have been established against Dackman. Dackman did not control the title to the subject property, as explained above, because he lacked the legal ability to change or affect title and thus could not be considered the owner of the subject property.[313] Dackman therefore did not violate the Housing Code because section 310(a) only imposes duties upon the owner of the property,[314] and therefore the case against him should have been dismissed.

B. Dackman Should Not Be Personally Liable for the Torts of Hard Assets

Even if a member of an LLC is not an "owner" under the Housing Code, the court may still apply common law doctrines to hold that member personally liable for the obligations of the LLC.[315] The court held that a reasonable trier of fact could find that Dackman personally committed the alleged tort and that Dackman's status as a member of an LLC did not protect him from liability.[316] In so holding, the court mistakenly disregarded the economically important liability shield of an LLC by inappropriately making Dackman personally liable for what is essentially the tortious conduct of the LLC.[317] The court could have properly weighed the interests of tort and corporate law by instead holding that (1) a reasonable trier of fact could not find that Dackman participated in or directed the commission of a tort,[318] and (2) the MLLCA protects members from personal liability when they act in the good faith service of the LLC.[319]

312. Brooks v. Lewin Realty III, Inc., 378 Md. 70, 79, 835 A.2d 616, 621 (2003); *see supra* Part II.A.2.

313. *See supra* Part IV.A.1.

314. HOUSING CODE § 310(a).

315. *See infra* Part IV.B.1.

316. *Allen*, 413 Md. at 152, 991 A.2d at 1228 (majority opinion).

317. *See infra* Part IV.B.2.a–b.

318. *See infra* Part IV.B.1.

319. *See infra* Part IV.B.2.

1. Dackman Did Not Personally Commit or Direct the Commission of a Tort

The court should have held that a reasonable trier of fact could not find that Dackman either personally committed a tort or directed the commission of a tort. In Maryland, corporate officers may be held liable "for those torts which they personally commit, or which they inspire or participate in, even though performed in the name of an artificial body,"[320] or if the corporate officer "is present on a daily basis during commission of the tort and gives direct orders that cause commission of the tort."[321] Therefore, the court was correct in applying this rule for liability of corporate officers to the members of an LLC.[322] The court, however, misapplied the facts and instead should have found that a reasonable trier of fact could not find that Dackman personally committed a tort or directed the commission of a tort.[323]

a. Dackman Did Not Personally Commit a Tort

The court should have properly applied the facts of this case to the legal precedent to hold that a reasonable trier of fact could not find that Dackman personally committed a tort. Holding a member of an LLC liable for personally committing a tort in the name of the LLC requires active participation by the individual member and requires the member to have actual knowledge of the alleged tort.[324] In this case, the court held that a reasonable trier of fact could find that Dackman personally committed, inspired, or participated in the tort of negligent maintenance.[325] The court then proceeded to present a list of hypothetical facts to explain what constituted sufficient evidence for a reasonable trier of fact to find Dackman personally liable for the injuries, which included that Dackman may have directed someone else to inspect the property, directed someone else not to inspect the property, or not directed anyone to inspect the prop-

320. Tedrow v. Deskin, 265 Md. 546, 550, 290 A.2d 799, 802 (1972); *see also supra* Part II.C.1.a.

321. T-Up v. Consumer Prot. Div., 145 Md. App. 27, 72, 801 A.2d 173, 199 (2002); *see also supra* Part II.C.1.b.

322. Allen v. Dackman, 413 Md. 132, 152–53, 155–56, 991 A.2d 1216, 1228, 1230 (2010).

323. *See infra* Part IV.B.1.a–b.

324. *See Tedrow*, 265 Md. at 550–51, 290 A.2d at 802 ("If the officer takes no part in the commission of the tort committed by the corporation, he is not personally liable . . . . It would seem, therefore, that an officer or director is not liable for torts of which he has no knowledge, or to which he has not consented." (citations omitted)).

325. *Allen*, 413 Md. at 155–56, 991 A.2d at 1230.

erty.[326] This analysis, however, does not meet the legal standard set forth in Maryland case law.[327]

In this case, there was no evidence of active participation on the part of Dackman that is comparable to the corporate officer in *Brock Bridge Ltd. Partnership v. Development Facilitators, Inc.*[328] Instead, it appears that Dackman was merely an instrument of Hard Assets, who acted on behalf of Hard Assets but did not exercise his own professional judgment.[329] First, there was no direct evidence that Dackman directly participated in the commission of a tort. Unlike the corporate president in *Brock Bridge*, who could have been held liable because he calculated and provided cost estimates for the company, there was no evidence that Dackman "exercised his own professional judgment and skill."[330] Instead, the *Allen* court concluded that a reasonable trier of fact could find that Dackman actively participated because he ran the day-to-day affairs of Hard Assets.[331] This conclusion, however, falls short of sufficient evidence for the trier of fact to find that Dackman personally committed, inspired, or participated in the act; there was no evidence that Dackman participated in the maintenance of the property.[332] The court implicitly recognized the weakness of its analysis by immediately using this fact to support a list of hypotheticals, which could prove actual participation.[333] The court, however, failed to cite to any specific fact, beyond the general assertion that Dackman ran the day-to-day affairs of Hard Assets, which showed that Dackman was more than "merely an instrument" of the LLC.[334]

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326. *Id.* at 155, 991 A.2d at 1230.

327. *See, e.g.*, Brock Bridge Ltd. P'ship v. Dev. Facilitators, Inc., 114 Md. App. 144, 167, 689 A.2d 622, 634 (1997) (explaining that an officer of a corporation was more than "merely an instrument" of the company and therefore actively participated in and could be personally liable for the tort).

328. *Compare Allen*, 413 Md. at 149–50, 155–56, 991 A.2d at 1226, 1230 (explaining that Dackman ran the day-to-day affairs of Hard Assets, executed the deed to buy the property, executed the deed to sell the property, and signed the complaint to have the Allens removed from the property), *with Brock Bridge*, 114 Md. App. at 167, 689 A.2d at 634 (stating that the defendant "exercised his own professional judgment and skill in making the cost estimates" for the construction site and therefore could be liable for the negligence).

329. *See supra* note 252 and accompanying text. R

330. *Brock Bridge*, 114 Md. App. at 167, 689 A.2d at 634; *see also supra* text accompanying notes 134–37. R

331. *Allen*, 413 Md. at 150, 155–56, 991 A.2d at 1226, 1230.

332. *See* Callahan v. Clemens, 184 Md. 520, 527, 41 A.2d 473, 476 (1945) ("The allegation that [the corporate directors] 'erected or caused to be erected' the wall in question seems to fall short of alleging that they personally participated in the work.").

333. *See supra* text accompanying note 326. R

334. *See supra* text accompanying notes 329–31. R

Second, Dackman had no knowledge of the alleged tort. Dackman never once visited the property and never inspected the property before or after Hard Assets purchased it.[335] Dackman never intended to lease the premises, was unaware that the Allens were residing at the property, and never took action to maintain the property.[336] Ms. Allen never contacted Dackman and never tried to communicate any information regarding the maintenance of the property to Dackman.[337] Thus, it is clear from the facts that Dackman had no knowledge of the alleged tort or knowledge regarding the maintenance of the property. For these reasons, a reasonable trier of fact could not find that Dackman personally committed the alleged tort of negligent maintenance and had knowledge about the maintenance of the property.[338]

b. Dackman Did Not Direct the Commission of a Tort

The court should have next held that a reasonable trier of fact could not find that Dackman directed the commission of a tort. Holding a member of an LLC liable for directing the commission of a tort requires that the member have knowledge of the alleged tort because the member must be present on a daily basis and direct the commission of the tort.[339] In *Allen*, as opposed to *MaryCLE, LLC v. First Choice Internet, Inc.*, there is no evidence that Dackman ever directed anyone else to take any specific action regarding the maintenance of the property in question.[340] It is conceded that Dackman did indeed run the day-to-day affairs of Hard Assets and was thus present on a daily

335. *Allen*, 413 Md. at 151, 991 A.2d at 1227.

336. *Id.*

337. *See supra* note 17 and accompanying text. R

338. *See* Tedrow v. Deskin, 265 Md. 546, 550–51, 290 A.2d 799, 802 (1972) (explaining that an officer of a business must actively participate in and have knowledge of the alleged tort before the officer can be held liable for personally committing a tort).

339. *See supra* Part II.C.1.b. The court did not actually conclude that a reasonable trier of fact could find that Dackman directed the commission of the tort because the court instead held that Dackman could have committed, inspired, or participated in the tort itself. *Allen*, 413 Md. at 155–56, 991 A.2d at 1230. In its analysis of the question, however, the court described how a reasonable trier of fact could find Dackman personally liable for possibly directing someone else to take some action regarding the maintenance of the property. *See supra* text accompanying note 326. R

340. The court explained that a reasonable trier of fact could find that Dackman was personally liable based on the facts that Dackman ran the day-to-day affairs of Hard Assets, executed the deed to buy the property, executed the deed to sell the property, and signed the complaint to have the Allens removed from the property. *Allen*, 413 Md. at 149–50, 155–56, 991 A.2d at 1226, 1230. In *MaryCLE v. First Choice Internet, Inc.*, in contrast, there was actual evidence showing that the president contracted with a third party and directed that third party to send mass advertising e-mails, which was held sufficient to surpass a motion for summary judgment. 166 Md. App. 481, 530, 890 A.2d 818, 846–47 (2006).

basis.[341] But, the court's analysis still fails because Dackman had no knowledge of the tort,[342] and there is no evidence that Dackman directed anyone to commit the alleged tort.[343] Likewise, there was no evidence to support the court's list of hypothetical facts, which it reasoned would be sufficient to show that Dackman directed a person to take a specific action regarding the maintenance of the property.[344] Unlike the president in *MaryCLE*, who directed the transmission of an unsolicited mass e-mail, there is no specific evidence showing that Dackman directed someone to maintain or not maintain the property in question.[345]

2. *Even if Dackman Was Found Liable for the Torts of Hard Assets, the MLLCA Should Protect Dackman from Liability*

The court properly should have held that the MLLCA protects members from personal liability when acting in good faith service of the LLC.[346] This rule is supported by the original economic justifications of an LLC,[347] principles of agency law,[348] and principles of corporate successor law.[349] The LLC was created as a business structure to provide for the pass-through tax benefits of a partnership and the liability shield of a corporation.[350] Interpreting the extent to which the liability shield of the LLC extends has proven problematic and caused a split among states.[351] This split has largely resulted from how courts interpret the phrase "solely by reason" of being a member.[352] In *Allen*, the court mistakenly decided to align Maryland with those states that have held members of an LLC personally liable regardless of whether the member was acting in service of the LLC.[353] Instead,

341. *See supra* note 340. R
342. *See supra* text accompanying notes 335–38. R
343. *See supra* note 340 and accompanying text. R
344. *See supra* note 340 and accompanying text. R
345. *Compare MaryCLE*, 166 Md. App. at 530, 890 A.2d at 846 ("[The President] does not deny personally arranging to retain the services of Master Mailings to achieve the goal of transmitting mass advertising emails to, as he phrased it, 'hundreds of thousands of other email addresses.'"), *with supra* text accompanying notes 340–44. R
346. *See infra* Part IV.B.2.a.
347. *See infra* Part IV.B.2.b.
348. *See infra* Part IV.B.2.c.
349. *See infra* Part IV.B.2.d.
350. *See supra* text accompanying notes 104–07. R
351. *See supra* Part II.C.2.
352. *See supra* Part II.C.2.i–ii.
353. Allen v. Dackman, 413 Md. 132, 153–54, 991 A.2d 1216, 1228–29 (2010) ("An LLC member is liable for torts he or she personally commits, inspires, or participates in because he or she personally committed a wrong, not 'solely' because he or she is a member of the LLC."); *see also supra* Part II.C.2.i.

the court should have held that the MLLCA protects members when acting in the good faith service of the LLC.[354]

a. The Court Should Protect Members When Acting in the Good Faith Service of the LLC

The court properly should have interpreted the phrase "solely by reason" to protect members from personal liability when acting in the good faith service of the LLC. The phrase "solely by reason" implies that there are circumstances where the member of an LLC should indeed be held personally liable.[355] The *Allen* court, however, improperly applied a narrow interpretation to the phrase "solely by reason" and thereby exposes members of an LLC to an inappropriate amount of personal liability.

In determining how the court should interpret the phrase "solely by reason," two interests should be weighed: (1) not allowing individuals to escape tort liability by acting under the mask of a business entity and (2) encouraging growth and innovation among businesses, especially small business.[356] Weighing these two important interests, the rule of imposing liability on LLC members should be modeled after the rule in *Resheff, Inc. v. 970 Kent Avenue Associates, LLC*: The liability shield of an LLC should protect its members when acting in the good faith service of the LLC.[357] Under this rule, a member may be held personally liable when (1) the member acts in his personal interest as opposed to the interests of the LLC, or (2) the member acts so as to impair the business of another party for the profit of the LLC or himself.[358] This rule does not allow members to escape liability for their personal tortious conduct because members are not protected from their intentional, willful, wanton, or reckless conduct.[359] But at the same time, this rule assures a member that he may act in his role as a member or manager without fear that every action on behalf of the

354. *See infra* Part IV.B.2.a.

355. Pepsi-Cola Bottling Co. of Salisbury, Md. v. Handy, No. 1973-S, 2000 WL 364199, at *3 (Del. Ch. Mar. 15, 2000).

356. *See* Vandervoort, *supra* note 108, at 55 (describing limited liability as a struggle between two conflicting goals: encouraging economic development and regulating business entities). R

357. *See supra* text accompanying notes 182–87. R

358. Resheff, Inc. v. 970 Kent Ave. Assocs., LLC, No. 40337/07, 2009 WL 175039, at *7 (N.Y. Sup. Ct. Jan. 26, 2009) (quoting Joan Hansen & Co., Inc. v. Everlast World's Boxing Headquarters Corp., 744 N.Y.S.2d 384, 391 (App. Div. 2002)).

359. *Cf.* Ace Dev. Co. v. Harrison, 196 Md. 357, 367, 76 A.2d 566, 570 (1950) ("Agents of a corporation, in such a matter, cannot hide behind the corporate shield and say they were acting solely as the agents of the corporation.").

LLC could potentially expose him to personal tort liability.[360] This rule more appropriately weighs the interests of tort and corporate law by holding individuals liable for their personal tortious conduct while also encouraging the economic growth of LLCs by protecting members who act in the good faith service of the LLC.[361]

b. Good Faith Service Promotes the Original Economic Justifications for Creating the LLC

The two original justifications for the creation of the LLC as an available business structure were the existence of the pass-through tax benefits of a partnership and the liability shield of a corporation in one single entity.[362] Public policy has long supported the view that "'[t]he law permits the incorporation of a business for the very purpose of escaping personal liability.'"[363] An LLC and its members are separate legal entities under which the member generally is not liable for the debts or obligations of the LLC.[364] It is perfectly acceptable that individuals choose to form an LLC with the express purpose of limiting the liability of its members. Providing a liability shield for members who act in the good faith service of the LLC promotes the original justification of providing members with limited liability.

The economic justifications and, specifically, the concept of limited liability support an interpretation of the MLLCA that protects members from personal liability when acting in the good faith service of the LLC. The existence of limited liability is designed to foster business development and economic efficiency by changing the behavior of individuals engaged in business activities.[365] The passage of the MLLCA and the creation of a separate legal entity as between the LLC

360. *See Joan Hansen*, 744 N.Y.S.2d at 390 ("'To hold otherwise would be dangerous doctrine, and would subject corporate officers and directors continually to liability on corporate contracts and go far toward undermining the limitation of liability which is one of the principal objects of corporations.'" (quoting *In re* Brookside Mills, Inc., 94 N.Y.S.2d 509, 518 (App. Div. 1950))).

361. *See supra* text accompanying note 356. R

362. *See supra* text accompanying notes 104–07. This Note acknowledges the existence of extensive literature regarding the availability of partnership-like tax benefits enjoyed by LLCs, but this Note will only discuss the benefit of the liability shield because the opinion in *Allen v. Dackman* does not affect the tax benefits enjoyed by LLCs. For a detailed discussion of the tax benefits enjoyed by LLCs, see generally Daniel S. Goldberg, *Choice of Entity for a Venture Capital Start-Up: The Myth of Incorporation*, 55 TAX LAW. 923 (2002) (explaining the tax advantages enjoyed by LLCs over corporations). R

363. *Joan Hansen*, 744 N.Y.S.2d at 390 (quoting Bartle v. Home Owners Coop., 127 N.E.2d 832, 833 (N.Y. 1955)).

364. *Id.* (quoting *In re* Morris, 623 N.E.2d 1157, 1160 (N.Y. 1993)); Allen v. Dackman, 413 Md. 132, 152, 991 A.2d 1216, 1228 (2010).

365. Vandervoort, *supra* note 108, at 53–55; *see supra* text accompanying note 109. R

and its members for liability purposes show a policy choice by the Maryland General Assembly that should not be disregarded lightly.[366] Members of an LLC are well aware of the consequences of their actions and act on behalf of the LLC accordingly.[367] Holding, as the court did, that LLC members are not protected regardless of whether they are acting in the service of the LLC could have a dampening effect on the encouragement of business development and economic efficiency.[368] Imposing liability on members even when acting in the good faith service of the LLC disincentivizes members from developing new business opportunities out of fear of subsequent personal liability.[369] Exposing members to personal liability for their good faith service of the LLC is a dangerous doctrine that may subject individual members to constant litigation and undermine the principle of limited liability.[370] Encouraging business development is best accomplished by enforcing the liability shield created by the MLLCA to protect members from personal liability when acting in the good faith service of the LLC.

c. Good Faith Service Is Supported by Principles of Agency Law

A rule protecting LLC members from personal liability when acting in the good faith service of the LLC is supported by legal principles contained in agency law.[371] Agency law provides that the acts of corporate officers and agents are binding upon the principal when

366. *Cf.* Litchfield Asset Mgmt. Corp. v. Howell, 799 A.2d 298, 316 (Conn. App. Ct. 2002) ("We recognize that the separate existence of a corporate entity for liability purposes represents a public policy choice, as expressed in Connecticut's legislation governing the formulation and regulation of corporations and limited liability companies, and that the corporate or limited liability form should not be disregarded lightly." (citing Toshiba Am. Med. Sys. v. Mobile Med. Sys., 730 A.2d 1219, 1223 (1999))).

367. *See* EASTERBROOK & FISCHEL, *supra* note 108, at 4 ("Managers assume their roles with knowledge of the consequences."). R

368. *Cf.* Hoover, *supra* note 121 ("It would particularly help small and start-up businesses, where investors . . . need the limited liability associated with being a limited partner . . . ."). R

369. *Cf. id.*; Vandervoort, *supra* note 108, at 54–55 ("[T]he key economic justification for limited liability is based on the premise that apart from the simple shifting of loss from interest holders to creditors, there is a change in behavior due to the limited liability status of interest holders."). R

370. *See* Joan Hansen & Co., Inc. v. Everlast World's Boxing Headquarters Corp., 744 N.Y.S.2d 384, 390 (App. Div. 2002) ("'To hold otherwise would be dangerous doctrine, and would subject corporate officers and directors continually to liability on corporate contracts and go far toward undermining the limitation of liability which is one of the principal objects of corporations.'" (quoting *In re* Brookside Mills, Inc., 94 N.Y.S.2d 509, 518 (App. Div. 1950))).

371. *See supra* note 191. R

such acts are performed within the scope of the agent's authority.[372] Actions outside of an agent's authority or actions adverse to the interest of the business entity cannot be binding upon the principal.[373]

These principles of agency law support a rule under which the MLLCA would protect members from liability when acting in the good faith service of the LLC. If a tortious act is committed by a member in his good faith service to the LLC, that act should be considered the tortious act of the LLC because the LLC member is acting within the scope of his authority and binds the LLC.[374] Therefore, if the member is acting in the good faith service of the LLC, the liability shield should apply, and the proper party to a suit should be the LLC, not the member.[375] If a tortious act is committed without good faith

372. Johnson v. Md. Trust Co., 176 Md. 557, 565, 6 A.2d 383, 386 (1939).

373. *See* Hecht v. Resolution Trust Corp., 333 Md. 324, 345, 635 A.2d 394, 405 (1994) ("[K]nowledge of an agent whose interests are adverse to the principal cannot be imputed to the principal."); P. Flanigan & Sons, Inc. v. Childs, 251 Md. 646, 654, 248 A.2d 473, 477 (1968) ("We have held that a statement made by an agent will not bind his principal until an agency is established and then only if the statement is within the scope of the agency." (citing Deane v. Big Spring Distilling Co. 138 Md. 388, 392–93, 113 A. 891, 893 (1921))); *see also* Felland Ltd. P'ship v. Digi-tel Commc'ns, LLC, 384 Md. 520, 531, 864 A.2d 1027, 1034 (2004) (exploring cases that "delineated the general rules for determining whether an employee's wrongful acts are within the scope of employment, thereby rendering the employer liable for such acts"); Lohmuller Bldg. Co. v. Gamble, 160 Md. 534, 540–41, 154 A. 41, 44 (1931) ("[K]nowledge privately acquired by any such agent, and not communicated to his principal or associates, will not be imputed to the corporation in matters in which the interest of the agent is adverse to its own, even where the agent actively participates in the transaction.").

374. A similar principle has been codified by commentators in a legal treatise:

> [W]here an agent acts in good faith for the principal under the latter's direction, relying upon the principal's representations as to the legal propriety of the act to be done, though in fact such act by the agent constitutes a tort, the law requires indemnity from the principal to the agent, for damages of third persons, and if, as the result of acts so performed, the agent is mulcted in damages, the principal must respond to the agent therefore, as well as for the necessary expenses incurred in resisting the claims of third persons who were injured in the transaction.

3 AM. JR. 2D *Agency* § 244 (2002); *cf.* Bob Holding Corp. v. Normal Realty Corp., 223 Md. 266, 266–67, 164 A.2d 457, 460–61 (demonstrating that where an attorney acted in service to his client, the act must be presumed to be the client's act).

375. *Cf.* RESTATEMENT (THIRD) OF AGENCY § 7.04 (2006) ("A principal is subject to liability to a third party . . . when the agent's conduct is within the scope of the agent's actual authority . . . and (1) the agent's conduct is tortious, or (2) the agent's conduct, if that of the principal, would subject the principal to tort liability."). *See generally id.* § 7.02 (2006) ("An agent is subject to tort liability to a third party harmed by the agent's conduct only when the agent's conduct breaches a duty that the agent owes to the third party."); *Bob Holding Corp.*, 223 Md. at 266–67, 164 A.2d at 460–61 (explaining that an attorney was free from liability for giving a termination notice to a third party because the attorney was acting as an agent for the client, and the action therefore, should be viewed as the action of the client).

service, such as intentionally, willfully, or opposed to the interest of the LLC, then that act should be considered the act of the agent.[376] This is appropriate because if the member is not acting in the good faith service of the LLC, then the member might not be acting within the scope of the member's authority.[377] Therefore, the liability shield should not apply, and the proper party to a suit should be the individual member, not the LLC.[378]

In *Allen*, Dackman was at all relevant times acting in the good faith service of the LLC. Similar to the attorney in *Bob Holding Corp. v. Normal Realty Corp.*, all of Dackman's actions were within his authority as a member of Hard Assets to bind the LLC.[379] Unlike the corporate officers in *Hecht v. Resolution Trust Corp.*, it appears that Dackman was never acting with interests adverse to the LLC.[380] Applying these prin-

376. *Cf.* RESTATEMENT (THIRD) OF AGENCY § 7.07 (2006) ("An employee acts within the scope of employment when performing work assigned by the employer or engaging in a course of conduct subject to the employer's control. An employee's act is not within the scope of employment when it occurs within an independent course of conduct not intended by the employee to serve any purpose of the employer."); *Hecht*, 333 Md. at 346, 635 A.2d at 405 ("[T]he agent cannot reasonably be expected to act upon or communicate knowledge of his own wrongdoing to the corporation.").

377. *See* Cornell v. Council of Unit Owners Hawaiian Vill. Condos., Inc., 983 F. Supp. 640, 649 (D. Md. 1997) ("In the absence of clear language, it is well-settled in Maryland that an agent is liable to third parties injured by his negligence in the improper performance of a duty." (citing Consol. Gas Co. v. Conner, 114 Md. 140, 156, 78 A. 725, 728–29 (1910))); 2 MD. LAW ENCYCLOPEDIA § 26 ("An agent is liable to third parties injured by his negligence in the improper performance of a duty. The agent may be liable for his own acts of negligence regardless of whether the principal's identity has been disclosed."). According to principles of agency law, actions taken outside of the agent's authority are not binding upon the principal. *See supra* note 375. **R**

378. *Cf.* A. S. Abell Co. v. Sopher, 179 Md. 687, 690, 22 A.2d 462, 463 (1941) ("[W]hen the undisputed, and uncontradicted evidence clearly discloses that a servant has committed an act of negligence, at a time when he was not acting within the scope of his employment, . . . 'it becomes the function of the trial court to declare the owner not liable.'" (citations omitted) (quoting Wagner v. Page, 179 Md. 465, 470, 20 A.2d 164, 167 (1941))); *cf. Hecht*, 333 Md. at 328, 346, 635 A.2d at 396, 405 (explaining that former officers of a corporation were not protected from potential liability for risking the company's funds in highly speculative and risky construction projects because the officers were not acting in the good faith service of the company).

379. *Compare* Allen v. Dackman, 413 Md. 132, 149, 991 A.2d 1216, 1226 (2010) (explaining that the actions taken by Dackman included running the day-to-day operations of Hard Assets, executing the deed to acquire the property, executing the deed to sell the property, and signing the complaint to have the Allens removed from the property may have allowed a reasonable trier of fact to determine that Dackman had the ability to change or affect title), *with* Bob Holding Corp. v. Normal Realty Corp., 223 Md. 260, 266–67, 164 A.2d 457, 460–61 (1960) ("While it is true that an attorney does not have blanket authority to act for a client, it appears that in this case the notice was given under the direction of the vendor, and must be presumed to be its act.").

380. *Compare Allen*, 413 Md. at 149, 991 A.2d at 1226 (explaining that the actions taken by Dackman were required to effectively run the day-to-day operations of Hard Assets), *with*

ciples of agency law, Dackman's actions should be considered the acts of the LLC, not Dackman, and the proper party to a suit should be Hard Assets with the liability shield of the MLLCA protecting Dackman.[381]

d. Good Faith Service Is Supported by Principles of Corporate Successor Liability

A rule protecting members from personal liability when acting in the good faith service of the LLC is supported by legal principles contained in corporate successor law, as well. Under Maryland law, successor corporations are not generally liable for the obligations of a previous corporation, subject to four specific exceptions.[382] The traditional rule of corporate successor liability and its four exceptions properly balance the competing interests of tort and corporate law: The general rule against liability promotes the "free transferability of assets," predictability, availability of capital, and mobility in the business world.[383] But, the four exceptions protect the rights of creditors and tort claimants in certain appropriate circumstances.[384] Most relevant to this case, the fourth exception prohibits a corporation from escaping tort liability when the transaction between the corporations was made through acts of fraud or with a lack of good faith.[385] This exception recognizes the interest of tort law in holding tortfeasors lia-

Hecht, 333 Md. at 328, 346, 635 A.2d at 396, 405 (reasoning that the former officers acted adversely to the company by engaging in highly speculative, risky, and negligently underwritten construction projects and therefore their knowledge could not be imputed to the corporation).

381. *See also infra* Part IV.B.2.e (showing why the liability shield should protect Dackman from personal liability).

382. Nissen Corp. v. Miller, 323 Md. 613, 617, 594 A.2d 564, 566 (1991); Balt. Luggage Co. v. Holtzman, 80 Md. App. 282, 290, 562 A.2d 1286, 1289 (1989) ("The general rule of corporate liability is that, ordinarily, a corporation which acquires the assets of another corporation is not liable for the debts and liabilities of the predecessor corporation."); Michael F. Dow, Recent Decision, *Successor Liability and Contract: Maryland Narrowly Construes the "Mere Continuation of the Entity" Exception*, 57 MD. L. REV. 642, 645–46 (1998). For a list of the four exceptions, see *supra* note 191. R

383. Dow, *supra* note 382, at 646–67 (citing Robert J. Yamin, *The Achilles Heel of the Takeover: Nature and Scope of Successor Corporation Products Liability in Asset Acquisitions*, 7 HARV. J.L. & PUB. POL'Y 185, 207–08 (1984)). R

384. *Id.* at 647.

385. *See Nissen Corp.*, 323 Md. at 617, 594 A.2d at 566 (explaining the fourth exception as where "'the transaction was fraudulent, not made in good faith, or made without sufficient consideration'"); *Balt. Luggage Co.*, 80 Md. App. at 290, 562 A.2d at 1289–90 (explaining the fourth exception as where "the transaction is entered into fraudulently to escape liability for debts" (citing Golden State Bottling Co. v. NLRB, 414 U.S. 168, 182 n.5 (1973))).

ble for the injuries that they cause.[386] Absent a showing of fraud or lack of good faith, however, the law properly recognizes the interest of corporate law in encouraging business and economic growth.[387]

These principles of corporate successor liability support an interpretation of the MLLCA that would protect members from liability when acting in the good faith service of the LLC. Just as the general rule of corporate successor liability encourages business interests by restricting liability,[388] if a tortious act is committed by a member in his good faith service to the LLC, he should be protected by the liability shield of the MLLCA.[389] And, just as the general rule of corporate successor liability falls under the fourth exception when there is fraud or a lack of good faith,[390] if a member is not acting in the good faith service of the LLC, the liability shield of the MLLCA should fall. If a tortious act is committed without good faith service, such as intentionally, willfully, or opposed to the interest of the LLC, then the member should be held liable for his tortious conduct because such conduct is the equivalent of fraud and does not deserve protection under Maryland law.[391] In *Allen*, Dackman was at all relevant times acting in the good faith service of the LLC and should therefore be protected by the liability shield of the MLLCA.[392]

e. Dackman Was Acting in the Good Faith Service of Hard Assets

A rule that protects members when acting in the good faith service of the LLC would support a holding that a reasonable trier of fact could not find Dackman liable. First, there was no evidence to show that Dackman ever acted in his own interest opposed to that of the LLC.[393] The evidence shows that Dackman was at all relevant times

386. *See* Dow, *supra* note 382, at 647 ("The four exceptions, alternatively, serve as a counterbalance to the rule against successor liability by protecting the rights of creditors and tort claimants when a successor corporation has explicitly or impliedly assumed its predecessor's liabilities, or attempted a fraudulent evasion of rightful claimants."). R

387. *Cf. id.* at 646–47 (explaining that absent a showing of one of the four exceptions, the rule against successor liability is supported by the strong public policy focused on economic growth).

388. *See supra* text accompanying note 383. R

389. *See supra* text accompanying notes 108–10, 118–21; *see also* Dow, *supra* note 382, at 646–47 (explaining the fraud exception to the doctrine of successor liability). R

390. *See supra* note 382. R

391. *See supra* text accompanying notes 118–121; *see also* Dow, *supra* note 382, at 646–47 (explaining the fraud exception as "a straightforward equitable principle that negates a successor's attempt to secure assets with inadequate consideration"). R

392. *See infra* Part IV.B.2.e.

393. In fact, in determining that a reasonable trier of fact could find that Dackman had the ability to change or affect the title, the court cited only to evidence demonstrating that

acting in the good faith service to the LLC.[394] Hard Assets was created to make a profit by buying and selling real estate.[395] In accordance with this purpose, Dackman took the following actions: executed the deed for Hard Assets to purchase the property, signed the complaint to have the Allens removed from the property, and signed the deed when Hard Assets sold the property.[396] Unlike the members in *Resheff* who acted with motives other than to benefit the LLC, there is no evidence in this case that Dackman took any actions opposed to the interest of the LLC.[397]

Second, there is no evidence to show that Dackman ever acted to impair the business of a third party for the profit of the LLC or himself. Dackman fulfilled all the LLC's obligations when Hard Assets bought and subsequently sold the property in question.[398] Dackman never acted to impair any business of the Allens.[399] The Allens were in fact illegal occupants of the property of whom Dackman had no knowledge.[400] When Dackman was made aware of the Allens he took action to enforce the LLC's property rights by having the Allens lawfully removed by way of court order.[401]

The court should properly balance the competing interests of tort and corporate law by adopting a rule under which the MLLCA protects members from liability when acting in the good faith service of the LLC.[402] On the one hand, protecting only the interest of tort

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Dackman successfully ran the day-to-day operations of Hard Assets. Allen v. Dackman, 413 Md. 132, 149, 991 A.2d 1216, 1226 (2010).

394. The evidence demonstrated that Dackman executed the deed for the LLC to buy the property, executed the deed when the LLC could make a profit by selling the property, and protected the LLC's property rights by signing the complaint to have the Allens removed from the property. *See id.*

395. *See supra* note 11 (explaining that Hard Assets was in the business of "flipping" real estate). R

396. *Allen*, 413 Md. at 149, 991 A.2d at 1226.

397. *Compare supra* notes 393–94 and accompanying text, *with* Resheff, Inc. v. 970 Kent Ave. Assocs., LLC, No. 40337/07, 2009 WL 175039, at *7 (N.Y. Sup. Ct. Jan. 26, 2009) (explaining that the members of the LLC were acting with motives other than to benefit the LLC). R

398. *Allen*, 413 Md. at 149, 991 A.2d at 1226.

399. In fact, when Hard Assets acquired the property, none of its members knew Ms. Allen and her children were living at the premises. *See supra* text accompanying note 13. While the Allens were living at the premises, the LLC never received or attempted to collect rent. *See supra* text accompanying note 17. During this period, Dackman was in charge of the LLC's day-to-day operations. *See supra* text accompanying notes 19–20. R R R

400. *See supra* text accompanying note 19. R

401. *See supra* text accompanying notes 14–16. R

402. *See supra* Part IV.B.2.a (demonstrating why protecting members from liability when acting in the good faith service of the LLC properly balances the interest of tort and corporate law).

law, by always imposing personal liability on members of an LLC, will disincentivize business growth and development.[403] On the other hand, protecting only the interest of corporate law, by never imposing personal liability on members of an LLC, will encourage unnecessarily risky and tortious conduct.[404] The tightrope that needs to be walked by the court is to find a way that encourages business development but not tortious conduct. In this case, the MLLCA should protect Dackman from personal liability because Dackman was acting in the good faith service of the LLC, acting neither in a manner opposed to the LLC's interest nor in a manner that impairs the business of a third party.

C. The Court Should Not Pierce the Veil of Hard Assets, LLC

Even if a member of an LLC is protected under the MLLCA, the court should still hold that member personally liable, under the appropriate circumstances, by piercing the veil of the LLC. Maryland courts should apply the long settled doctrine of piercing the corporate veil to the liability shield of LLCs.[405] Applying the doctrine to this case, the veil of Hard Assets should not be pierced.[406]

1. The Court Should Apply the Doctrine of Piercing the Corporate Veil to LLCs

Jurisdictions that have considered whether to apply the doctrine of piercing the corporate veil to an LLC have held that the doctrine applies equally to LLCs.[407] Maryland courts should apply this same reasoning to adopt the doctrine of piercing the corporate veil to LLCs.[408] Similar to the Delaware LLC statute at issue in *Westmeyer v. Flynn*, the MLLCA was designed to provide for the creation of a single business entity that possessed the tax benefits of a partnership and the limited liability of a corporation.[409] This clear purpose for the forma-

403. *See generally supra* Part IV.B.2.b.

404. *See* Stephen D. Sugarman, *Doing Away with Tort Law*, 73 CALIF. L. REV. 555, 559–60 (1985) ("Many commentators have tried to justify tort law on the ground that it promotes socially desirable behavior. Specifically, they claim that it prevents injuries by deterring unreasonably dangerous conduct." (footnote omitted)).

405. *See infra* Part IV.C.1.

406. *See infra* Part IV.C.2.

407. *See supra* Part II.C.4 (discussing the jurisdictions and reasoning in which the doctrine of piercing the corporate veil has been applied to LLCs).

408. *See generally supra* notes 225–30 and accompanying text (exploring other states that have favorably considered this approach). R

409. *Compare* Westmeyer v. Flynn, 889 N.E.2d 671, 677 (Ill. App. Ct. 2008) ("'[The Delaware Act] is designed to achieve what is seemingly a simple concept—to permit persons or entities ("members") to join together in an environment of private ordering to form and

tion of an LLC leads to the logical conclusion that for liability purposes, an LLC should be treated in the same manner as a corporation.[410] Like a corporation, the LLC was designed to protect its members from liability by creating an independent legal entity.[411] Members of an LLC are not generally liable for the obligations of the LLC.[412] The liability shield of the LLC, however, is not absolute, and the veil of the LLC may be appropriately pierced under the criteria of the well-settled doctrine of piercing the corporate veil.[413]

2. The Veil of Hard Assets Should Not Be Pierced

Applying the doctrine of piercing the corporate veil to LLCs, however, the veil of Hard Assets should not be pierced here. Piercing the veil of a Maryland LLC is appropriate in two circumstances: (1) where the member has committed fraud or (2) where paramount equity demands the imposition of personal liability.[414] Maryland law has proven to be much more restrictive than other states in allowing courts to pierce through a business entity's veil.[415] The facts of this case are not sufficient to pierce the veil of Hard Assets because (1) there is no evidence that Hard Assets or Dackman ever committed fraud and (2) there is no evidence to establish the level of necessity required to pierce the veil based on paramount equity.[416]

a. There Is No Evidence That Hard Assets or Dackman Committed Fraud

The court should not pierce the veil of Hard Assets based on fraud. To prove fraud, the defendant must at the very least have made some material representation that was false, have known the statement was false, and have meant the statement to defraud, and the plaintiff

operate the enterprise under an LLC agreement with tax benefits akin to a partnership and limited liability akin to the corporate form.'" (quoting Elf Atochem N. Am., Inc. v. Jaffari, 727 A.2d 286, 287 (Del. 1999))), *with supra* Part II.B.2. (explaining that the MLLCA was designed to provide for a liability shield and favorable tax treatment).

410. *Westmeyer*, 889 N.E.2d at 677.

411. Troutwine Estates Dev. Co. v. Comsub Design & Eng'g, Inc., 854 N.E.2d 890, 898 (Ind. Ct. App. 2006).

412. *Westmeyer*, 889 N.E.2d at 678 ("Just as with a corporation, the members of an LLC are not generally liable for the obligations of the LLC.").

413. *Id.*

414. Residential Warranty Corp. v. Bancroft Homes Greenspring Valley, Inc., 126 Md. App. 294, 306–07, 728 A.2d 783, 789 (1999); *see supra* Part II.C.3.

415. *Residential Warranty*, 126 Md. App. at 309–10, 728 A.2d at 790–91.

416. *See infra* Part IV.C.2.a–b.

must have justifiably relied on the false statement and suffered harm.[417]

The burden of proof for alleging fraud falls on the plaintiff to allege clear and sufficient facts that show in detail the defendant's fraud.[418] In this case, there is no evidence that either Hard Assets or Dackman ever made a false material representation.[419] There is actually no evidence to show that Hard Assets or Dackman made any representations to the plaintiffs at all.[420] Even if some representation could be shown by the plaintiffs, there is no evidence that Hard Assets or Dackman ever intended to defraud anyone, that the plaintiffs justifiably relied on any representations, or that the plaintiffs were injured by any representation.[421] The facts alleged in this case are clearly lacking to establish fraud on the part of Hard Assets or Dackman, and thus the veil of Hard Assets should not be pierced based on fraud.

b. There Is No Evidence That Shows a Necessity to Pierce the LLC Veil Based on Paramount Equity

The court should not pierce the veil of Hard Assets based on the necessity of paramount equity. To create the necessity of paramount equity in Maryland, it must first be shown that a single individual owns substantially all the company's stock.[422] It must then be shown that one of several additional factors exists: undercapitalization, failure to recognize the corporate form, commingling of funds, nonfunctioning

417. Colandrea v. Colandrea, 42 Md. App. 421, 428, 401 A.2d 480, 484–85 (1979).

418. Ace Dev. Co. v. Harrison, 196 Md. 357, 367, 76 A.2d 566, 570 (1950) ("[T]he burden of proof is on the one charging fraud to establish by clear, specific acts, facts that in law constitute fraud.").

419. *See generally* Allen v. Dackman, 413 Md. 132, 139–40, 991 A.2d 1216, 1220 (2010) ("'Ms. Allen did not speak to Hard Assets or its representatives, and was not aware of who Hard Assets was. Similarly, Monica D. Allen did not know Hard Assets or [Respondent].'" (alteration in original) (quoting Allen v. Dackman, 184 Md. App. 1, 5, 964 A.2d 210, 212 (2009))).

420. *See generally id.*

421. *Compare Colandrea*, 42 Md. App. at 422–24, 428–32, 401 A.2d at 481–82, 484–86 ("Given the pervasive presence of fraud in this case, we conclude that the chancellor erred in refusing to disregard the corporate entity of Cortland Realty, Ltd. and impose personal liability on the promissory notes upon the perpetrator of the fraud, Mrs. Colandrea."), *with Allen*, 413 Md. at 138–41, 991 A.2d at 1219–21 (explaining that Hard Assets bought the property with the intention of immediately reselling it, never intended to lease the property, never collected rent for the property, and the Allens were occupying the premises illegally).

422. Residential Warranty Corp. v. Bancroft Homes Greenspring Valley, Inc., 126 Md. App. 294, 307, 728 A.2d 783, 789 (1999) (quoting Travel Comm., Inc. v. Pan American World Airways, Inc., 91 Md. App. 123, 158–59, 603 A.2d 1301, 1318 (1992)).

officers, insolvency, or absence of corporate records.[423] Although Maryland law allows for the piercing of the corporate veil based on paramount equity, no Maryland court has ever used it.[424]

The facts of this case are not sufficient to justify piercing the veil of Hard Assets based on paramount equity. Based on the facts before the Maryland appellate courts, it is not clear that Dackman owned substantially all of the stock of Hard Assets.[425] Even assuming that Dackman did own substantially all of the stock, the plaintiffs have still failed to prove a necessity to pierce the corporate veil based on paramount equity. First, no evidence before the appellate courts showed that the corporation was undercapitalized, failed to recognize the corporate form, failed to issue stock, or operated with a loss;[426] Hard Assets was in the business of flipping houses for a profit and possessed enough capital to purchase the property in question.[427] Likewise, there was no evidence before the appellate courts that (1) Dackman commingled the funds and assets of Hard Assets with his own personal funds; (2) there were nonfunctioning officers or directors, (3) Hard Assets was insolvent; or (4) Hard Assets lacked corporate records.[428] There was simply no evidence before the appellate courts to show that Dackman "exercised such complete domination over [Hard Assets] to warrant a conclusion that the corporation 'had no separate mind, will or existence of its own.'"[429] Thus, the veil of Hard Assets should not be pierced based on a necessity of paramount equity.

V. CONCLUSION

In *Allen v. Dackman*, the Court of Appeals of Maryland held that an individual member of an LLC could be personally liable under the Housing Code because the trier of fact could find that the member was the "owner" of property by having the ability to change or affect the title and "personally committed, inspired, or participated" in the alleged tort.[430] The court jeopardized the existence of the critical lim-

423. *See* Hildreth v. Tidewater Equip. Co., 378 Md. 724, 735–36, 838 A.2d 1204, 1210 (2003) (listing "factors commonly considered" by courts when deciding to apply the doctrine); *Residential Warranty Corp.*, 126 Md. App. at 307, 728 A.2d at 789.

424. *See supra* note 217 and accompanying text. R

425. The Court of Appeals explained only that Dackman was one of two members of Hard Assets. *See Allen*, 413 Md. at 139, 991 A.2d at 1220.

426. *See id.* at 135–41, 991 A.2d at 1218–21 (laying out the facts in the case without mentioning these factors).

427. *See supra* note 11. R

428. *See supra* note 426. R

429. Hildreth v. Tidewater Equip. Co., 378 Md. 724, 736, 838 A.2d 1204, 1211 (2003).

430. *Allen*, 413 Md. at 141–42, 145, 991 A.2d at 1221, 1223–24.

ited liability of an LLC by imposing personal liability on members for the obligations of the LLC.[431] The court could have properly held individuals accountable for their tortious conduct and respected the liability shield by examining Dackman's potential liability under a three step analysis: (1) whether Dackman possessed the legal ability to change or affect title,[432] (2) whether Dackman acted in the good faith service of Hard Assets,[433] and (3) whether the veil of Hard Assets should be pierced.[434] If a member of an LLC fails any part of this analysis, then personal liability should apply.[435] While this reasoning would have resulted in a different outcome in the current case, this analysis properly weighs the competing interests and would hold an LLC member personally liable in the appropriate cases.[436]

431. *See supra* Part IV.
432. *See supra* Part IV.A.
433. *See supra* Part IV.B.
434. *See supra* Part IV.C.
435. *See supra* Part IV.
436. *See supra* Part IV.