

## LLC Manager Shielded from Personal Liability

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*An Erny Girl, LLC v. BCNO 4, LLC*, 257 So. 3d 212 (La. App. 4th Cir. 2018).

A recent case decided by the Louisiana Fourth Circuit Court of Appeal, *An Erny Girl, LLC v. BCNO 4, LLC*, illustrates how limited liability companies protect their individual members from personal liability. This case arose from a lease dispute between a tenant (An Erny Girl, L.L.C.) and its landlord (BCNO 4, L.L.C.). While the dispute was ongoing, and before Erny Girl was evicted, its member/manager gave the landlord rent checks drawn on an Erny Girl account. BCNO waited until after it prevailed on the lease dispute before trying to deposit the checks, all of which had been written more than six months earlier. By that time, Erny Girl's account had been closed. BCNO sued Erny Girl's member/manager in her personal capacity, seeking to hold her personally liable for Erny Girl's rent obligations on grounds of fraud and misrepresentation. The trial court granted the member's exception of no cause of action, agreeing with her that the checks were legally "stale" (meaning the bank was not required to honor them) and that she could not be held personally liable for the L.L.C.'s rent obligations. BCNO appealed.

On appeal, the Fourth Circuit noted the "wholly separate" nature of an L.L.C. and its members. The caselaw typically only allows veil-piercing in "exceptional circumstances" where the entity is an "alter ego" used to defraud third parties, or where "the members have failed to conduct business on a 'corporate footing' such that it is not possible to distinguish the corporation from its managers." Louisiana Revised Statute 12:1320 similarly limits a member's liability for an L.L.C.'s debts except in cases involving fraud, breach of professional duty, or a negligent or wrongful act.

The court rejected BCNO's fraud argument because there was no allegation that Erny Girl's account had insufficient funds at the time the checks were written, or that the individual member knew the checks "remained outstanding" when she later closed the account. Nor were there any allegations that she intended to cause a loss to BCNO, or that Erny Girl was her "alter ego." As to the statutory negligent/wrongful act exception, the Louisiana Supreme Court has limited it to discrete, inapplicable situations, such as where the conduct constituted a traditional tort or crime, or where the member was not acting in his or her capacity as an L.L.C. member. Because no exception to the general rule protecting L.L.C. members from personal liability was shown, the Fourth Circuit affirmed the trial court's judgment, but directed the trial court to allow BCNO to amend its claims against the member to try to state a viable fraud claim.

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