The Maryland courts are dealing with a glut of contract breach cases that originate in the 2008 housing market crash. At best, developers and owners were slow to pay, or did not pay, on contracts for the construction of new houses. At worst, many owners and developers took money from the sale of property for themselves, and stiffed the contractors who had built the houses.

And the bad guys hide behind their empty corporations and limited liability companies, having siphoned all the cash out of the bank accounts for personal use, often to support a lifestyle they can no longer afford. The unpaid contractors are left with no chance of recovering on a money judgment, or recovering anything in a bankruptcy case.

In Maryland it is almost impossible to impose personal liability on the owners of a corporation or limited liability company in these circumstances. On January 25, 2013, the Maryland Court of Special Appeals published Serio v. Baystate Properties, which makes crystal clear that the protections against personal liability afforded by the corporate entity will not be disregarded unless a plaintiff can prove fraud, which is the present intention to deceive. That means proof that the other guy did not intend to honor the contract at the time he made the contract. A change in circumstances that leads him to do unethical or improper things, later, is not always fraud.

To get through that corporate protection, it is not enough to prove a contract was broken because the money was siphoned out of the company by an evil corporate officer. It is not enough that a corporate officer ignored an escrow agreement and took unauthorized withdrawals. And it is not enough that a single shareholder or member of the entity exercises almost complete control over the entity, while not paying it's bills. And it may not even be enough to prove that the entity was grossly undercapitalized when it made the contract with you.

How did this happen?

I have been involved in this issue since the 1990's, when I first argued before the Maryland Court of Special Appeals (in one of the cases cited in this most recent opinion). That case involved travel agents who actively siphoned money from airline ticket sales out of accounts, and paid kickbacks to airline employees for preferred treatment (we even used prejudgment attachments to seize bank accounts and assets of the bad guys in several states).

The last twenty years have seen the appellate courts consistently err on the side of protecting a public policy honoring corporate existence and protections against personal liability over fundamental fairness. In the realm of business transactions involving corporations and limited liability companies the guiding principle remains "buyer beware."
How do you protect yourself?

We can give you good legal advice at the inception of your contract, and we can even guide you through a pre-contract process of due diligence. But it is in the course of your contract- when the parties are performing, exchanging gooods and services and money- where you are most at risk. Cheating and other sharp practices will crop up at any time during a contract. It is through a close relationship with your counsel, and your willingness to pull the trigger on default or breach remedies written into your contract, that you gain some measure of protection.

Minimize your risk. Remain vigilant throughout the term of a contract. And seek continuing advice.