

Appellate Division Provides Guidance on Imposition of Personal Liability under the Consumer Fraud Act on Officers, Managers, Owners and/or Employees of Construction Firms for Statutory Violations, applying *Allen v. V&A*

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Earlier this year, the New Jersey Supreme Court in *Allen v. V & A Brothers, Inc.*, 208 N.J. 114 (2011), ruled on the question of whether officers, owners, managers and/or employees of businesses providing services to consumers can be sued individually (alongside the company) and be held personally accountable for statutory violations under New Jersey's Consumer Fraud Act, N.J.S.A. § 56:8-1 et seq. ("CFA"). In the context of that residential construction case, the Court held that they may, and adopted a fact-specific test for liability that will render it difficult for such defendants to extricate themselves from a case with a pre-trial motion, should they find themselves named in a lawsuit.

This week, the Appellate Division, in an (as yet) unreported decision, *Kort v. Renier Van Aswegen*, 2011 WL 5137833 (App. Div. Nov. 1, 2011), applied *Allen* for the first time in a construction case to impose attorneys' fees and costs, personally, on a construction firm's owner. In *Kort*, the plaintiffs hired Creative Solutions & Services, LLC ("Creative") to perform certain improvements to their home and paid a substantial sum of money toward the improvements, which were never completed. They sued Creative and its individual owners for breach of contract and for statutory violations of the CFA. The defendants defaulted and the trial court entered a default judgment as to the contract claim only, declining to hold the individuals liable for the judgment.

The Appellate Division reversed and provided some guidance on how *Allen* will be applied in construction cases. The Court found that there were undoubtedly statutory violations by one of the owners who failed to include the contractor's registration number in the contract; failed to provide a copy of Creative's commercial general liability insurance policy; failed to include product guarantees and warranties in the contract; and failed to designate a start and end date of the work; and failed to identify the products and materials that would be used in the remodeling work. *Id.* * 3.

The Appellate Division held that the statutory violations in question were not the proximate cause of any loss by the homeowners, so it declined the request by the homeowners to impose the judgment on the individual owners and to treble it, as is permitted under the CFA. The Court did rule, however, that since the statutory violations existed, the individual owner (only one of them) was liable for the attorneys' fees and costs of bringing suit, regardless of the fact that the statutory violations did not result in harm to the homeowner.

This recent opinion provides further proof that construction firms performing services in the residential context must take care to ensure strict compliance with the statutes and regulations application in residential construction. The recent case law has developed to, in essence, substantially lessen the burden of proof on the plaintiff seeking to impose

personal liability, thereby rendering the corporate shield of questionable utility to shield owners/officers/employees from personal liability. Construction firms are well advised to closely evaluate the manner in which they perform contracts and take action to ensure uniform procedures which strictly adhere to applicable regulations.

*This blog is maintained by Kevin J. O'Connor, Esq. The views expressed herein are those of the author and not necessarily those of the law firm Peckar & Abramson, PC.