

Vicarious Liability

Vicarious liability may be defined as the liability one suffers for the act or acts of another. In the real estate agent context, vicarious liability concerns itself with whether a broker or firm is liable for the acts of its agents. And under traditional tort principles, as you were taught in your real estate class, a brokerage firm is liable for the acts of its agents. In the case of *Meyer v. Holley*, 537 U.S. ____ (2003) the United States Supreme Court very recently decided a very important real estate agent vicarious liability case.

In *Meyer* the Supreme Court considered whether an individual officer and owner of a corporate brokerage firm could be held personally liable for the acts of one of its agents. The agent was alleged to have made disparaging remarks to a racially mixed couple, thus violating fair housing laws. The high court held that corporate officers and shareholders could not be held personally liable for the acts of the corporation's agents, and reversed the United States Ninth Circuit Court of Appeals in California, which had extended liability to owners and officers.

The difference is in the distinction, and here it is significant. The issue is not whether the company is liable – under basic tort law the corporation itself is vicariously liable for the acts of its agents in all 50 states to my knowledge – rather, the issue is whether that liability can be extended not just to the company but all the way down to its owners even though they may be mere shareholders expecting insulation from liability, which is the *sine qua non* corporate benefit. Thus the issue presented by the *Meyer* case was whether the corporate veil could be pierced and the individual owners of the corporation held liable even though they may not have had to any thing to do with the underlying offensive act.

The Ninth Circuit Court of Appeals had concluded that traditional vicarious liability rules did not control the personal liability of corporate shareholders and officers in Fair Housing Act cases, and that owners and officers might be liable “simply on the basis that the owner or officer controlled (or had the right to control) the actions of the employee.” While that is indeed the law in some situations, the United States Supreme Court held it was not the law in Fair Housing Act cases.

This case should give some comfort to real estate brokerage firm owners, but recognize that it does nothing to relieve individual agents or brokerage companies from liability.

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