



Dissolved corporations: Who is liable for damages? - by Lindsay Gaze

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Who Is Liable for Damages When a Dissolved Corporation Enters into a Lease?

An officer who signs a lease on behalf of a dissolved corporation is personally liable under the lease. Not only will the officer who has signed the lease be liable, but it is possible that all of the officers of the corporation may be personally liable. In addition, in some cases, shareholders themselves may be liable. The following provides a basic explanation for why this is the case under New York law.

Dissolution Terminates a Corporation's Legal Existence

After a corporation dissolves, the corporation's legal existence terminates. *Moran Enters., Inc. v. Hurst*, 66 A.D.3d 972, 975 (2d Dep't 2009) ("A dissolved corporation is prohibited from carrying on new business"). In very limited circumstances, a corporation may retain the ability to carry out business solely for the purpose of winding up the corporation's affairs. New York Business Corporation Law §§ 1004, 1005(a)(1), 1006; *80-02 Leasehold, LLC, v. CM Realty Holdings Corp.*, 123 A.D. 3d 872 at 873-74 (a dissolved corporation "retains a limited de jure existence solely for the purpose of winding up its affairs.")

A dissolved corporation cannot enter into new contracts, including lease agreements. *Lorisa Capital Corp. v. Gallo*, 119 A.D.2d 99, 110, (2d Dep't 1986) ("All new business [for a dissolved corporation] is prohibited"). However, this does not mean that agreements entered into on behalf of dissolved corporations are automatically invalid. Instead, in most cases, the individuals purporting to act on behalf of a corporation will find themselves individually liable.

Individuals Acting on Behalf of a Dissolved Corporation Are Personally Liable

One of the primary benefits of incorporation is that the owners and officers of a company are generally not liable for the debts and obligations of the company. A corporation is its own legal entity. But when a corporation dissolves, it ceases to exist as its own legal entity, and the insulation shareholders and officers were once protected by evaporates.

In *Spring Val. Improvements, LLC v. Abajian*, 40 A.D.3d 619, 619-20 (2d Dep't 2007), the Appellate Division, Second Department, held that, "A person who purports to act on behalf of a dissolved corporation is personally responsible for the obligations incurred." This is a legal principle that has

been upheld again and again by New York courts.

In 80–20 Leasehold, LLC, the plaintiff (80–20 Leasehold) attempted to recover damages for breach of a commercial lease from the defendant, CM Realty Holdings Corp. However, CM Realty had been dissolved by the New York secretary of state for nonpayment of taxes prior to the execution of the lease. Although the plaintiff was unable to hold CM Realty liable, it was able to hold the corporate officer that entered into the lease personally liable for the damages.

All Officers of a Dissolved Corporation May Be Liable

Importantly, all of a corporation's officers may be liable under a lease that has been executed in the corporation's name after it has dissolved. "Personal liability is not limited to the person who executes a contract on behalf of a dissolved corporation, but extends to the officers of the dissolved corporation." 80–20 Leasehold, LLC, 123 A.D. 3d at 874.

Shareholders May Also Be Liable

Shareholders, too, may find themselves liable for obligations incurred in the name of a dissolved corporation. For example, in *Hartley v. Esposito* (In re *Hartley*), 479 B.R. 635 (2012), the United States District Court for the Southern District of New York, applying New York state law, held that, "shareholders who received distributions of assets from a corporation could be liable for claims against the dissolved corporation." *Id.* at 640. Shareholders are especially likely to be liable if a court finds that they are attempting to defraud another party. Although shareholders are not required by New York law to notify the corporation's creditors that the corporation will be or has already dissolved, shareholders who dissolve a corporation without giving such notice "put themselves at risk for being held liable for the obligations of their dissolved company." *Id.* at 641. Similarly, members of the board of directors could share in the liability for the same reasons. See New York Business Corporation Law § 1006.

When a dissolved corporation enters into a lease in New York, all parties involved should understand their legal rights and options. Officers, board members, and shareholders of a dissolved corporation should understand that they all may be personally liable for debts and damages incurred by the corporation. Likewise, parties seeking recourse from a corporation that no longer legally exists should be aware that New York law permits them to sue the owners and managers of a dissolved corporation individually.

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