

RUBY POTTER,	*	IN THE
<i>Petitioner,</i>	*	COURT OF APPEALS
v.	*	OF MARYLAND
DENISE POTTER,	*	September Term, 2021
<i>Respondent.</i>	*	Petition Docket No. 0161

* * * * *

**MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF
PETITION FOR WRIT OF *CERTIORARI***

Proposed *amici curiae*, Kenneth Abel, Colleen Helmlinger, Stuart Levine, Marshall Paul, Daryl J. Sidle and Edward Wender (“Amici”) move, pursuant to Md. Rule 8-511, for leave to file an *amici curiae* brief in support of Petition for Writ of *Certiorari*, a copy of which is attached hereto, and state the following in support:

INTEREST OF THE AMICI

The Amici have an interest in this matter as they regularly represent limited liability companies (“LLCs”) and the case presents issues of importance to limited liability companies and their members and the counsel who represent them. *See* Appendix A. The Court of Special Appeal’s decision upsets the reasonable expectations of those who conduct business via LLCs and, in many cases, will result in outcomes that are wholly-unanticipated and will severely hamper effective business planning. Significantly, and as more fully explained in the Amici’s brief,

the holding of the Court of Special Appeals in this matter (a) would have implications beyond Maryland residents and Maryland LLCs; (b) would conflict with the Maryland Limited Liability Company Act¹ (the “Maryland LLC Act”); (c) would conflict with decisions in other states; and (d) would result in inconsistent application of provisions in an operating agreement because some provisions would be enforceable against some members but not against others depending upon the state of residence of a member, rather than the state of organization of the LLC.

**REASONS THE BRIEF OF THE AMICI IS DESIRABLE,
AND THE ISSUES INTENDED TO BE RAISED IN THE BRIEF**

The Court of Special Appeals dismissed the argument that the operating agreement in *Potter* was enforceable as a matter of contract law. Instead, it held that, under Maryland law, provisions in an operating agreement regarding the disposition of the economic elements of a membership interest in a Maryland LLC upon the death of a member could only be enforceable if the operating agreement was executed in accordance with the formalities required in Maryland for the execution of a will.

This decision would affect the enforceability of operating agreements of LLCs that have Maryland residents as members even if the LLC is organized in a state where the LLC statute recognizes freedom of contract in drafting LLC operating agreements, free of any constraint from laws applicable to the execution

¹ Md. Code Ann., Corps. & Ass’ns. § 4A-101 to -1303 (Westlaw through July 1, 2021, from the 2021 Regular Session of the General Assembly).

of wills. Indeed, many such LLCs may not conduct any business in Maryland, even though a member may reside here. For example, like corporations, many LLCs are formed in Delaware, and have members who are residents of many different states (including Maryland) and operate in states that differ from the states of domicile of their members.

Applying the rationale of the Court of Special Appeals decision, if a Maryland resident is a member of a non-Maryland LLC with *Potter*-like provisions in its operating agreement, the provision would not be enforceable with respect to the Maryland decedent unless the operating agreement was executed in accordance with Maryland testamentary requirements, even if the provision would be enforceable if the decedent was a resident of some other state. Thus, the decision creates a potential anomaly because provisions that are enforceable in the LLC's state of domicile may not be enforceable in Maryland. In other words, a provision contained in the operating agreement of an LLC organized in another state could be found to be enforceable as to all of the LLC's members except a member domiciled in Maryland.

Going one step further, under the Court of Special Appeals decision, if a decedent of a non-Maryland LLC was not a Maryland resident at the time he or she became a member, but merely later moved to and died in Maryland, the previously effective operating agreement provision would be rendered unenforceable. Needless to say, this would burden the operation of LLCs throughout the country

and would burden the members of those LLCs, since the only way to assure that such provisions would, in all cases, be enforceable would be to have the operating agreement of all non-Maryland organized LLCs executed in accordance with Maryland's testamentary requirements.²

While not directly at issue in this case, Amici frequently draft or encounter operating agreements that provide for purchase rights or options to purchase a decedent's membership interest, including an economic interest, upon a member's death. The purchase price may be a fixed price, based on a formula, or frequently, by a determination of fair market value (determinations of fair market value often include discounts for lack of marketability and lack of control). The Amici do not view such provisions as testamentary in nature because they do not designate a person to receive the deceased member's interest, but the rationale of the Court of Special Appeal's decision does not clearly distinguish such provisions from the provisions in *Potter*. Thus, granting a writ of certiorari is proper if only to clarify that the Court of Special Appeal's decision does not apply in such circumstances.

² Presumably, an LLC would need to monitor the states of residence of its members, and have the operating agreement re-executed in accordance with Maryland's testamentary requirements whenever a member moves to Maryland. Query: Is there consideration for requiring such a re-execution? Also, what happens if the Maryland resident amends his or her will to address the disposition of the membership interests in the non-Maryland limited liability company after the date of the operating agreement? All of these questions are presented but not answered by the Court of Special Appeals' opinion.

**THE AMICI REQUESTED AND THE RESPONDENT
DENIED CONSENT TO THE FILING OF THE AMICI CURIAE BRIEF**

Amici twice requested that Respondent's counsel, on behalf of Respondent, consent to the filing of the amici curiae brief as recommended by the Maryland Rules of Appellate procedure but the Respondent's counsel, on behalf of Respondent, refused consent both times.

**IDENTIFICATION OF PERSON(S) WHO MADE A CONTRIBUTION TO
THE AMICI CURIAE BRIEF AND THE NATURE THEREOF**

No persons other than the Amici have made a contribution to the preparation or filing of this motion or the attached brief.

CONCLUSION

For the foregoing and following reasons, the Amici respectfully request that the Court grant a writ of certiorari to review the Court of Special Appeals' decision.

Date: July 27, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of July 2021, the forgoing motion was served via MDEC on all registered users in this case.

/s/ Kenneth B. Abel
Kenneth B. Abel

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<i>Petitioner,</i>	*	COURT OF APPEALS
v.	*	OF MARYLAND
DENISE POTTER,	*	September Term, 2021
<i>Respondent.</i>	*	Petition Docket No. 0161

* * * * *

**AMICI CURIAE BRIEF IN SUPPORT OF PETITION FOR WRIT OF
CERTIORARI**

Proposed *amici curiae*, Kenneth Abel, Colleen Helmlinger, Stuart Levine, Marshall Paul, Daryl J. Sidle and Edward Wender (“Amici”) are attorneys who regularly represent Maryland businesses, including limited liability companies (“LLCs”) and together have over 230 years’ experience at the Bar. Their interests in this case are set forth in detail in Appendix A. We respectfully request that this Court grant a writ of certiorari in the above referenced matter as this case presents issues of importance to limited liability companies and their members and the counsel who represent them. The Court of Special Appeal’s decision upsets the reasonable expectations of those who conduct business via LLCs and, in many cases, will result in outcomes that are wholly-unanticipated and will severely hamper effective business planning.

As decided by the Court of Special Appeals, the case: (a) would have

implications beyond Maryland residents and Maryland LLCs; (b) would conflict with the Maryland Limited Liability Company Act¹ (the “Maryland LLC Act”); (c) would conflict with decisions in other states; and (d) would result in inconsistent application of provisions in an operating agreement because some provisions would be enforceable against some members but not against others depending upon the state of residence of a member, rather than the state of organization of the LLC.

The Court of Special Appeals dismissed the argument that the operating agreement was enforceable as a matter of contract law. Instead, it held that, under Maryland law, provisions in an operating agreement regarding the disposition of the economic elements of a membership interest in a Maryland LLC upon the death of a member could only be enforceable if the operating agreement was executed in accordance with the formalities required in Maryland for the execution of a will.

This decision would affect the enforceability of operating agreements of LLCs that have Maryland residents as members even if the LLC is organized in a state where the LLC statute recognizes freedom of contract in drafting LLC operating agreements, free of any constraint from laws applicable to the execution of wills. Indeed, many such LLCs may not conduct any business in Maryland, even though a member may reside here. For example, like corporations, many LLCs are

¹ Md. Code Ann., Corps. & Ass’ns. § 4A-101 to -1303 (Westlaw through July 1, 2021, from the 2021 Regular Session of the General Assembly).

formed in Delaware, and have members who are residents of many different states (including Maryland) and operate in states that differ from the states of domicile of their members.

Applying the rationale of the Court of Special Appeals decision, if a Maryland resident is a member of a non-Maryland LLC with *Potter*-like provisions in its operating agreement, the provision would not be enforceable with respect to the Maryland decedent unless the operating agreement was executed in accordance with Maryland testamentary requirements, even if the provision would be enforceable if the decedent was a resident of some other state. Thus, the decision creates a potential anomaly because provisions that are enforceable in the LLC's state of domicile may not be enforceable in Maryland. In other words, a provision contained in the operating agreement of an LLC organized in another state could be found to be enforceable as to all of the LLC's members except a member domiciled in Maryland.

Going one step further, under the Court of Special Appeals decision, if a decedent of a non-Maryland LLC was not a Maryland resident at the time he or she became a member, but merely later moved to and died in Maryland, the previously effective operating agreement provision would be rendered unenforceable. Needless to say, this would burden the operation of LLCs throughout the country and would burden the members of those LLCs, since the only way to assure that such provisions would, in all cases, be enforceable would be to have the operating

agreement of all non-Maryland organized LLCs executed in accordance with Maryland's testamentary requirements.²

While not directly at issue in this case, Amici frequently draft or encounter operating agreements that provide for purchase rights or options to purchase a decedent's membership interest, including an economic interest, upon a member's death. The purchase price may be a fixed price, based on a formula, or frequently, by a determination of fair market value (determinations of fair market value often include discounts for lack of marketability and lack of control). The Amici do not view such provisions as testamentary in nature because they do not designate a person to receive the deceased member's interest, but the rationale of the Court of Special Appeal's decision does not clearly distinguish such provisions from the provisions in *Potter*. Thus, granting a writ of certiorari is proper if only to clarify that the Court of Special Appeal's decision does not apply in such circumstances.

For the foregoing and following reasons, the Amici respectfully request that the Court grant a writ of certiorari to review the Court of Special Appeals' decision.

² Presumably, an LLC would need to monitor the states of residence of its members, and have the operating agreement re-executed in accordance with Maryland's testamentary requirements whenever a member moves to Maryland. Query: Is there consideration for requiring such a re-execution? Also, what happens if the Maryland resident amends his or her will to address the disposition of the membership interests in the non-Maryland limited liability company after the date of the operating agreement? All of these questions are presented but not answered by the Court of Special Appeals' opinion.

INTRODUCTION

There is no dispute as to the facts. James Potter (“James”) owned an interest in a Maryland LLC, TR Steak Pasadena, LLC (“TR Steak”). The operating agreement in question provided that upon James’ death, Ruby Potter (“Ruby”) would succeed to James’ share in TR Steak’s profits, losses and distributions (the “Economic Interest”). James and Ruby subsequently divorced and in the separation agreement Ruby waived her rights to James’ interest in TR Steak, but TR Steak’s operating agreement was not amended to reflect this agreement. After the divorce, James married Denise. Later, James died intestate. Of course, because it was an operating agreement and because no witness was required, James’ signature to the operating agreement was not witnessed in accordance with Maryland’s requirements for wills.

The trial court, interpreting the operating agreement, held that Ruby was entitled to the Economic Interest under the terms of the operating agreement. The Court of Special Appeals reversed. It held that the provisions in the operating agreement regarding James’ Economic Interest were testamentary in nature; and, therefore, the operating agreement had to be executed in accordance with Maryland’s requirements for wills. Since the operating agreement was not so executed, its provisions regarding the disposition of the Economic Interest were unenforceable, and the Economic Interest passed to Denise by virtue of the laws of intestacy, as she was James’ spouse upon his death. Denise did not challenge the

provision of the operating agreement that required James' non-economic rights to pass to the surviving members of TR Steak, and the surviving members did not choose a side in the Denise/Ruby dispute.³

**PICK YOUR PARTNER:
RESTRICTIONS ON TRANSFERABILITY ON DEATH
ARE TYPICAL PROVISIONS IN OPERATING AGREEMENTS**

LLCs became popular because, among other reasons, they are taxed as “pass-through” entities with no income tax imposed on the LLC itself, which is the same as partnerships. Yet, unlike partnerships, members of an LLC generally are not personally liable for the debts of the LLC.

Under partnership law, the “pick your partner” rule developed whereby partners chose their partners. This distinguished partnership interests from stock in corporations where the default is free transferability of the stock.⁴ The “pick your partner” rule carried over into LLCs.

When the Maryland General Assembly enacted the Maryland LLC Act in 1992, the Internal Revenue Service (“IRS”) required that in order for an LLC to be taxed as a partnership, the LLC had to lack at least two of the corporate characteristics of free transferability of interests, continuity of life and centralized

³ Query: What if the surviving spouse also were to challenge “testamentary” transfers of non-economic rights or if the surviving members expected that their operating agreement be enforced in accordance with its terms?

⁴ See Larry E. Ribstein, et al., *Ribstein and Keatinge on Limited Liability Companies*, § 9:3 (2021-1 ed., June 2021).

management.⁵ *See Second Report of the Special Joint Committee on a Proposed Maryland Limited Liability Company Act, November 1, 1991* at 4. Accordingly, § 4A-601(b)(1) of the Maryland LLC Act provides that a person may be admitted as a member after acquiring a membership interest directly from the LLC only upon compliance with provisions of the operating agreement or, if the operating agreement does not address the admission of a member, only by the unanimous consent of the members. Section 4A-604 of the Maryland LLC Act imposes similar requirements for an assignee to become a member of a Maryland LLC.

These provisions carry over to the rights of a holder of an “economic interest”⁶ in a Maryland LLC. First, under § 4A-606 of the Maryland LLC Act, a person ceases to be a member of a Maryland LLC upon his or her death unless, in general, the operating agreement provides otherwise. Under § 4A-606.1 of the Maryland LLC Act, if a person ceases to be a member due to the person’s death, and the LLC does not purchase the deceased person’s membership interests, the person (or his or her estate) will be “deemed to be an assignee of the unredeemed economic interest” under §§ 4A-603 and 4A-604. Under § 4A-603(a), an economic interest is assignable (*e.g.*, by will) “unless otherwise agreed” – which means,

⁵ In December 1996, with the so-called “check the box regulations”, LLCs with more than one member would always be taxed as partnerships unless the LLC elected to be taxed as a corporation. *See* Treas. Reg. §§ 301.7701-1 through 301.7701-3.

⁶ Section 4A-101(i) of the Maryland LLC Act defines “economic interest” as “a member’s share of the profits and losses of a limited liability company and the right to receive distributions from a limited liability company.”

among other things, “unless otherwise stated ... in the operating agreement.”⁷ Here, the members of TR Steak agreed that James’ economic interest would be transferred to Ruby.

The Amici in their practices incorporate restrictions on transferability of membership interests, including both economic and/or non-economic interests, into operating agreements. In the proper circumstances, these provisions could require that the non-economic interests of a deceased member be automatically transferred to the other members.⁸ Under the *Potter* holding and notwithstanding the express language of the Maryland LLC Act, such provisions would not be enforceable unless the operating agreement with respect to members who die as Maryland residents meets the testamentary execution requirements.

FREEDOM OF CONTRACT

Section 4A-102 of the Maryland LLC Act provides: “Unless otherwise provided in this title, the policy of this title is to give the maximum effect to the principles of freedom of contract and to the enforceability of operating

⁷ *See id.* §4A-101(x); *see also* §4A-402(a)(3) (“[M]embers may enter into an operating agreement to regulate or establish any aspect of the affairs of the limited liability company or the relations of its members, including provisions establishing ... [t]he rights of the members to assign all or a portion of their membership interest.”)

⁸ For example, an LLC could have voting and non-voting interests, with the voting interests owned by the principals and the non-voting interests owned by the employees. Upon the death of an employee, under the operating agreement, the deceased employee member’s non-economic interests may transfer to the other employees. This company’s agreed upon structure of having only employees benefit from the LLC’s operations may not be enforceable under the Court of Special Appeal’s holding.

agreements.” Indeed, other state LLC statutes similarly incorporate the concept that LLCs are primarily creatures of contract, subject only to provisions in the applicable LLC act that cannot be modified by agreement.⁹ Accordingly, members of LLCs organized in states other than Maryland are governed by their operating agreements, and they would not expect a different result just because a Maryland resident is a member.

INTERNAL AFFAIRS DOCTRINE

In *N.A.A.C.P. v. Golding*, 342 Md. 663, 679 A.2d 554 (1996), the Court of Appeals applied and discussed the “internal affairs doctrine” in a dispute relating to a non-profit membership organization. In *Golding*, the Court of Appeals quoted approvingly to the Supreme Court’s decision in *Edgar v. MITE Corp.*, 457 U.S. 624 (1982):

[t]he internal affairs doctrine is a conflict of laws principal which recognizes that only one State should have the authority to regulate a corporation’s internal affairs—matters peculiar to the relations among or between the corporation and its current officers, directors, and shareholders—because otherwise a corporation could be faced with conflicting demands.

Golding, 342 Md. at 674.

The Court of Appeals recognized the internal affairs doctrine in *Tomran, Inc. v. Passano*, 391 Md. 1, 891 A.2d 336 (2006), in which it held that under the internal affairs doctrine, Irish law governed the rights of a holder of a depositary receipt to maintain a derivative action. Similarly, the Court of Special Appeals, applying the

⁹ See *Ribstein and Keatinge*, *supra* note 4, at §5:12.

internal affairs doctrine, held that Delaware law controlled a breach of fiduciary duty claim involving a Delaware corporation in *Storetrax.com, Inc. v. Gurland*, 168 Md. App. 50, 895 A.2d 355 (2006).

While we are not aware of a Maryland appellate court decision applying the internal affairs doctrine to the interpretation of an operating agreement of an LLC organized outside of Maryland, the application of the doctrine in cases involving other entities, as noted above, strongly suggests that this would be the case. Nevertheless, the Court of Special Appeals decision in *Potter* can only be interpreted to reject the internal affairs doctrine, at least whenever a Maryland resident is a member of a non-Maryland LLC and he or she dies.

**OPINIONS FROM NUMEROUS JURISDICTIONS
ENFORCE PROVISIONS SIMILAR TO THAT IN *POTTER***

There are numerous cases in which other states' courts that have held that provisions similar to the one in the TR Steak operating agreement are not testamentary and are enforceable under contract law principles.

In *Blechman v. Estate of Blechman*, 160 So. 3d 152 (Fla. Dis. Ct. App. 2015), which was noted by the Court of Special Appeals, the operating agreement contained restrictions on transferability that provided that in the event of the death of a member, the membership interest passed to the deceased member's children *per stirpes*. 160 So. 3d at 153. The Florida court applied New Jersey law based on the internal affairs doctrine and held that the provision was enforceable.

In a more recent case, *In the Matter of the Estate of Cook*, 2020 Ark. App. 292, 601 S.W.3d 453 (2020), the court enforced the provisions of an operating agreement that provided that the interest of the deceased member would devolve to the remaining member without payment of any consideration. The court noted that the operating agreement provided adequate consideration for such a provision. *Id.* at 457-458.

The results in *Blechman* and *Estate of Cook* are squarely within the mainstream of judicial decisions involving similar transfer provisions in the context of partnerships and other agreements. For instance:

- In *More v. Carnes*, 309 Ky. 41, 214 S.W.2d 984 (1948), the court held that a partnership agreement which provided that upon the death of a partner the decedent's partnership interest became the property of the other partner was not testamentary and was enforceable.
- In *Netz v. Howe*, 31 Cal. 2d 395, 189 P.2d 5 (1948), an agreement between Howe, the owner of a business, and his manager, Netz, which provided that upon Howe's death the business would be transferred to Netz as additional consideration for his services, was enforced and was held not to be a testamentary disposition but rather an enforceable contract.
- In *Faggelle v. Maremma*, 131 Conn. 277, 38 A.2d 791 (1944), a partnership agreement that provided for a deceased partner's share to

pass to his widow upon death was held to be enforceable and was not a testamentary disposition against a challenge from the remaining partner.

- In *Michaels v. Donato*, 4 N.J. Super. 570, 67 A.2d 911 (1949), a clause in a partnership agreement providing for a deceased partner's share in the business to devolve to the remaining partner for a fixed price of \$1,000 was held to be enforceable and not testamentary.

In all of the above cases, the provisions relating to disposition of an interest upon death were part of an operating agreement or a partnership agreement or, in the case of *Howe*, a stand-alone contract. This over 70 year line of cases suggests that the Court of Special Appeals here ignored long established principles.

The operating agreement in *Potter* is not distinguishable in any material respect from the agreements in the cases cited above. Indeed, if Ruby had been a co-member with James, rather than his ex-wife, it is hard to imagine the Court of Special Appeals reaching the same result. However, the enforceability of assignment provisions in an operating agreement should not turn on whether the assignee is or is not a member or economic interest holder in the LLC. As provided in § 4A-402(a)(7) of the Maryland LLC Act, an operating agreement may include provisions establishing the “rights of any person, *including a person who is not a party to the operating agreement or who is not a member of the limited liability*

company, to the extent set forth in the operating agreement” (emphasis added).¹⁰

CONCLUSION

Potter involves the enforceability of a provision in a contract--the operating agreement of TR Steaks. The right to determine who becomes a member of an LLC or who holds its economic and non-economic interests, is vested solely in the members of the LLC in accordance with the Maryland LLC Act and the terms of the LLC’s operating agreement. In other words, an operating agreement is a contract, given with valid consideration, and its terms cannot and should not be governed by laws which are applicable to gratuitous transfers – *i.e.*, the law of testamentary dispositions. Maryland courts should follow the Maryland LLC Act, as well as the law of other states, and enforce the operating agreement.

The Court of Special Appeals holding in *Potter* is in direct conflict with the internal affairs doctrine with respect to non-Maryland LLCs with Maryland residents as members. Counsel to non-Maryland LLCs will likely be unaware that a Maryland resident who is a member of the LLC must have his or her signature witnessed in accordance with Maryland’s requirements for wills. Of course, there are a myriad of other potential problems: What is the outcome if a member moves to Maryland or changes his or her will after the date of the operating agreement? What result occurs if an LLC, organized and operating in another state, simply

¹⁰ Query: Would the Court of Special Appeals come to a different result if the operating agreement required Ruby to pay one dollar to James’ estate?

refuses to recognize the *Potter* rule because its state's law would dictate a different result? Finally, could the non-Maryland LLC's managers or managing member be sued by its other non-Maryland members if it were to follow the *Potter* result for taking an action inconsistent with the LLC's operating agreement?

For the reasons discussed above, Amici request that the Court grant certiorari in this case.

Date: July 27, 2021

Respectfully submitted,

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**CERTIFICATION OF WORD COUNT
AND COMPLIANCE WITH RULE 8-112**

1. This brief contains 3282 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112. This brief was prepared with proportionally spaced type, using the font Times New Roman and the type size of 13 points.

/s/ Kenneth B. Abel
Kenneth B. Abel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of July 2021, the forgoing brief was served via MDEC on all registered users in this case.

/s/ Kenneth B. Abel
Kenneth B. Abel

**APPENDIX A—STATEMENTS OF INTEREST OF *AMICI CURIAE*
IN MOTION FOR LEAVE TO SUMMIT AMICUS BRIEF**

(All of the *Amici Curiae* are Members of the
Maryland State Bar Association’s Business Law Section’s
Unincorporated Associations Committee, the Committee responsible for LLCs.
All Affiliations, Including the membership of the Amici on Maryland State Bar
Association’s Business Law Section’s Unincorporated Associations Committee, Are
For Identification Purposes Only and Do Not Indicate the Support of Those Affiliations
of the Position Taken by the *Amici Curiae*.)

Kenneth B. Abel has been in private practice for over 27 years and is a shareholder in Baker, Donelson, Bearman, Caldwell & Berkowitz PC in Baltimore. Mr. Abel serves as outside general counsel to numerous emerging growth and mature companies, where he provides his extensive experience negotiating and/or drafting merger and acquisition transaction documents (e.g., asset purchase agreement and merger agreements), private offering documents, limited liability and limited partnership agreements, stockholder agreements, venture capital financing agreements, loan agreements, employment arrangements (including equity compensation for employees), and business contracts. Mr. Abel is the current chair of the Maryland State Bar Association’s Business Law Section’s Unincorporated Associations Committee. He is also the current Business Law Section designee to the Maryland State Bar Association’s Board of Governors. He is the former chair of the Maryland State Bar Association’s Business Law Section as well as the former chair of its Securities Law Committee. Mr. Abel has testified extensively before the Maryland General Assembly on legislation affecting business in Maryland.

Colleen Ferg Helmlinger has been in private practice for over 28 years and is a shareholder in Snee, Lutche, Helmlinger & Spielberger, P.A. in Bel Air, Maryland. She concentrates her practice in corporate mergers and acquisitions, real estate acquisition and development, commercial law, and non-profit organizations. She most-recently served as Co-Chair of the Legislative Committee for the Harford County Chamber of Commerce. Ms. Helmlinger also volunteers as a speaker and mentor for The Ground Floor, counseling entrepreneurs as well as a guest speaker for Harford County Economic Development Advisory Board (EDAB), the Harford County Housing Agency and the Harford County Office of Aging.

Stuart Levine has been in private practice for over 46 years and currently maintains an office in Baltimore County. His practice is concentrated on business planning and tax law. He has an LL.M. in Taxation from Georgetown University Law Center. He was the Chair of the Maryland State Bar Association Section of Taxation and Chair of the Special Committee that initially drafted the Maryland Limited Liability Company Act. He is also one of the co-authors of treatise *Maryland Limited Liability*

Company Form and Practice Manual and is a Founding Fellow of the American College of LLC and Partnership Attorneys. He was also the Co-Chair of the ABA's original Prototype Limited Liability Company Act.

Marshall B. Paul has been in private practice for over 44 years and is a partner in Saul Ewing Arnstein & Lehr, LLP, in Baltimore. He focuses his practice on counseling businesses, health care concerns and professionals with respect to limited liability company matters, general corporate matters, joint ventures, acquisitions and sales, fiduciary duty issues and financings. His clients include large-scale health care providers, technology companies, distributors, service providers and manufacturers of various sizes, as well as individual health care professionals and other professionals.

A co-author of the Maryland Limited Liability Company Act, he served on the American Bar Association committee that drafted the ABA's original Prototype Limited Liability Company Act and has lectured both locally and nationally regarding limited liability companies and other legal matters. He has co-authored numerous articles on limited liability companies and other legal matters, as well as a widely-used book on limited liability companies. He is the former chair of the Maryland State Bar Association's Business Law Section. He is also one of the co-authors of treatise *Maryland Limited Liability Company Form and Practice Manual* and is a Founding Fellow of the American College of LLC and Partnership Attorneys.

Daryl J. Sidle has been in private practice for over 35 years and is a partner in Baxter Baker in Baltimore. As one of the principal drafters of Maryland's Limited Liability Company Act, he has extensive experience negotiating and drafting operating agreements for LLCs. He has taught estate planning and estate and gift tax as an adjunct professor at the University of Baltimore's graduate tax program for over two decades.

He has published articles on LLCs, S corporations and the alternative minimum tax and has authored or co-authored treatises on LLCs and Buy Sell Agreements. He lectures regularly at continuing professional programs for lawyers and accountants on LLCs, mergers and acquisitions, estate planning and income tax topics. He has also spoken at the Maryland judicial education program on fiduciary duties in LLCs. He is also one of the co-authors of treatise *Maryland Limited Liability Company Form and Practice Manual*.

Edward L. Wender has been in private practice for over 43 years and is a partner in the Potomac Law Group in Washington, D.C. He has over 35 years of experience in commercial real estate and general business representation, representing a variety of borrowers with institutional lenders, Freddie Mac, HUD-insured loans and CMBS

loan originators, involving hotels, mixed use developments, automobile dealerships, equipment dealerships, medical and other office buildings, multifamily apartments and shopping centers. Mr. Wender is a frequent panelist on matters relating to limited liability company issues and limited liability company operating agreements. He is a Founding Fellow of the American College of LLC and Partnership Attorneys and has been an active member of the American Bar Association's Business Law Section's LLCs, Partnerships, and Unincorporated Entities Committee since 2004.

RUBY POTTER,

Petitioner,

v.

DENISE POTTER,

Respondent.

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IN THE

COURT OF APPEALS

OF MARYLAND

September Term, 2021

Petition Docket No. 0161

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ORDER

UPON CONSIDERATION of the Motion for Leave to File *Amici Curiae* Brief in Support of Petition for Writ of *Certiorari*, and any response thereto,

IT IS THIS _____ day of _____, 2021

ORDERED that the Motion for Leave to File *Amici Curiae* Brief in Support of Petition for Writ of *Certiorari* is granted.

Judge, Court of Appeals