

## **Corporate Briefing: An update on the personal liability of company directors**

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The separate legal personality of a registered company from its owners and directors is a cornerstone of company law. However, the circumstances in which a director may be made legally liable for acts taken by a corporate entity are important for directors and corporate officers to keep in mind. Recent jurisprudence from Ireland and the UK has provided helpful guidance on the issue of the liability of directors.

### **View from the UK Supreme Court - Lifestyle Equities C.V. and another v Ahmed<sup>1</sup>**

The proceedings addressed the question of the personal liability of directors as accessories to a tort committed by a company in the context of a trademark dispute where it was found there had been an infringement of a registered trademark. Trademark infringement is a strict liability tort, meaning that the state of mind of the wrongdoer is irrelevant.

A separate trial examined the role of two directors of one of the defendant companies, as the directors were found to be personally liable in the proceedings for the infringement. On appeal before the Supreme Court, the Court focussed on the question of the personal liability of the directors. Firstly, the Court investigated whether the defendant directors were jointly and severally liable for the acts of infringement of the company, in the absence of any finding that they knew, or ought to have known, that the company's activities constituted trademark infringement. Secondly, even if they were found to be liable, the Court asked whether an award of damages could be made against them where there was no finding they personally acted in bad faith.

The Court held that had there been direct infringement by the defendant directors and there is no general principle of English law that would exempt them from the ordinary principles of tort liability simply because the infringement occurred in the discharge of their duties as directors. It was held that neither the principle of separate corporate personality nor the principle of limited liability justifies allowing directors to escape personal liability for their harmful acts or omissions.

However, despite finding that the defendant directors had caused the company to engage in an infringement, the Supreme Court found that the directors' level of knowledge was not sufficient to fix them with liability. The Court considered that it would be unjust that anyone, whether a company director or not, whose act causes another person to commit a tort should be held jointly liable for the tort as an accessory if the individual was acting in good faith and without knowledge of the facts that made the act of the other person tortious.

The main takeaway from the case is that in order for a director to be liable as an accessory to a tort committed by a company, a director must have knowledge of the essential facts that make the act wrongful. This applies even if the tort is one of strict liability (where a defendant is liable regardless of his or her intentions) – which itself does not require knowledge as a necessary condition before liability can be found.

## The Irish Perspective

Under Irish law, the personal liability of directors for acts of a company has recently been considered in *Powers v Greymountain*<sup>2</sup>. In that case two shadow directors, the Cartu brothers, used Greymountain Management Limited, an Irish limited company, to ostensibly offer investors the opportunity to engage in binary option trades. However, it transpired that the investors' funds were misappropriated, and the plaintiff sued for recovery of their funds.

The Cartu brothers were shadow directors of Greymountain and installed two Irish directors, one a professional director and the other a university student. The directors signed a power of attorney on behalf of the company in favour of one of the Cartu brothers. The directors had little knowledge what the company was doing. Given the scale of the fraud, the Court had no hesitation in imposing personal liability on the Cartu brothers, as shadow directors, for the debts of the company.

As regards the directors, the Court held that while they did not appear to have been aware of the fraud nonetheless personal liability should be imposed due to their total dereliction of duty.

Another recent decision on this issue is, *Powerkids*<sup>3</sup>. In that decision the High Court assessed a “grossly insolvent” animation and live action production company in receivership and considered applications from two creditors of the company for numerous reliefs pursuant to the Companies Act 2014.

The Court imposed personal liability of \$30,800,238.92 on a joint and several basis on three of the company directors for fraudulent and reckless trading and other breaches of company law. The three directors who were made personally liable, were all based in India and did not ultimately contest the hearing of the application. The two Irish based directors (who served as non-executive directors of the company and had resolved their differences with the creditors) had no order made against them.

The Court held that the company consistently overstated the value of its intangible assets and incurred expenses under disingenuous transactions, there were numerous instances established by the receiver of misappropriation or diversion of assets from the company, and no steps were taken by directors to monitor the company's solvency position. The Court was satisfied that personal liability should be imposed on each of the three directors who were knowing parties in the reckless conduct of business and knowing parties in the carrying on of business with intent to defraud creditors.

## Conclusion

These cases highlight the importance for directors of remaining cognisant of their duties and taking an involved role in the operation of companies to which they have been appointed. While a finding was not ultimately made against the directors in *Lifestyle Equities C.V.*, the English Supreme Court decision makes clear that there is no principled or doctrinal obstacle to a director being made liable for the acts of

a company in tort. Recent Irish case law on this theme also illustrates the danger for company directors where they believe or have reasonable cause to believe that the company is unable to pay its debts as they fall due and is potentially at risk of insolvency.

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1. Lifestyle Equities C.V. and another v Ahmed [2024] UKSC 17
2. [2022] IEHC 599
3. Powerkids Entertainment (Singapore) PTE. Limited v Adenwala [2023] IEHC 673

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