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No Veil to Hide Behind: Personal Liability for Corporate Fraud

The days of directors and officers taking comfort in the corporate veil as a shield against personal exposure are over. In *CHU de Québec-Université Laval v Tree of Knowledge International Corp*, the Ontario Court of Appeal unanimously confirmed that an officer or director who participates in fraudulent conduct can be held personally liable for the corporation's civil fraud, without any need to pierce the corporate veil.

The decision's message is clear: corporate office is not a licence to make reckless promises with impunity, especially where millions of dollars are at stake and the corporate officer is the one making the misrepresentations.

Background

The case arose out of the early days of the COVID-19 pandemic, when CHU, Québec's largest hospital network, urgently needed millions of N95 masks. The sole director and CEO of Tree of Knowledge Inc. personally negotiated a deal to supply CHU with 3 million masks for over \$11 million. No N95 masks were ever delivered.

The trial judge found the company's director personally liable for civil fraud — a judgment exceeding \$11 million. On appeal, among other things, the defendant challenged the basis for personal liability. The Court of Appeal dismissed the appeal in its entirety.

Personal Liability Without Piercing the Corporate Veil

The central legal issue was whether the trial judge erred in imposing personal liability on the company's director, who argued that the law should not extend personal liability to cases of pure economic loss and urged the Court to clarify this area of law.

The Court of Appeal declined the invitation, holding that the law is clear where fraud is involved: an officer or director may face personal liability where their conduct is "independently tortious or 'tortious in itself'" or where they act pursuant to a "separate identity or interest" from the corporation.

Critically, the Court held that fraud need not fit into either of those categories. Instead, direct participation in fraud is a standalone basis for personal liability. The Court reasoned that

where a director or officer personally engages in fraud, even on behalf of the corporation, the director “makes the fraud their own.”

Key Takeaways

Fraud defeats the corporate shield – full stop. The Court of Appeal has made this explicit: where a director or officer personally participates in fraudulent conduct, personal liability follows as a matter of course. There is no need to pierce the corporate veil or satisfy additional tests.

Recklessness is enough – and the bar may be lower than many think. Civil fraud does not require a deliberate scheme to deceive. A director satisfies the knowledge element if they:

- make representations without any honest belief in their truth
- remain indifferent to whether the representations are true
- close their eyes to facts suggesting the representations are false

Courts can infer the intent to deceive from recklessness alone.

The corporate form protects – but not against individual wrongdoing. The corporate veil is not intended to insulate individuals from the consequences of their own fraud, even fraud born of recklessness rather than calculated deceit. As businesses continue to operate in environments demanding rapid decision-making, this decision is a stark reminder that individuals in leadership roles bear personal responsibility not to make representations they cannot stand behind.