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March 2, 2015

The weight of the corporate veil: It will be lifted with only the strongest tools

The "corporate veil" is an old and well-establish concept. Corporations are separate legal entities under the law and, generally, liability will not flow through the corporation and onto the owners and directors. This is why a corporate bankruptcy doesn't result in a flurry of debt collectors knocking on the door of every shareholder.

The separate legal personality is not an absolute principle. A court may "pierce" the corporate veil and go behind the company to impose personal liability. To disregard the separate legal personality of a corporation, a litigant must show that the company is interchangeable with the shareholder, is being used as a shield for fraudulent or improper conduct is simply a sham. This is no easy feat. *Zheng v Your New Car Calgary Inc*, 2015 ABQB 121 is a helpful reminder that those who contract with a corporation must recognize this separation and take steps to protect their legal interests before things go wrong.

In *Zheng*, the plaintiff developed a friendship with the owner of a used car dealership and ultimately decided to invest in a new car venture. The return could be lucrative, the defendant explained, but he needed inventory and was short on cash.

The plaintiff agreed to invest $125,000 in exchange for 20% of the new business. Two promissory notes issued by the company secured the full amount and stipulated a payment due date. The money was never repaid and the plaintiff sued. Judgment followed against the business but the plaintiff sought to enforce the debt personally against the friend who owned the business.

The evidence showed that after the money was paid into the corporate account, the defendant racked up numerous personal expenses and made personal payments of irregular amounts each month. For tax purposes, the defendant's accountant attributed these funds as draws or shareholder loans.

Despite these facts, the court was unwilling to lift the corporate veil. Central to this decision was the fact that the business was otherwise legitimate. The fact of attributing personal expenses back to the shareholder showed some separation of personality from the corporation. It operated before and after the investment and, for that reason, could not be said to have been formed or used for an unlawful purpose or wrongful act or that it was created to deflect monies from their proper use. Here is case where there is no dispute that money was lent as a result of personal relationship. It was accepted by the court that the plaintiff's investment had allowed the defendant to pay out fund to himself and use the corporate bank account for his own purposes. Notwithstanding all of these facts – the money was lent to a corporation and used legitimately by the corporation. The Court could not lift the corporate veil, no matter how unfortunate for the plaintiff.

- Research contributed by John Wallace, 2014/2015 articling student