Partnership v Company – piercing the corporate veil

It has long been argued that a company is preferable to a traditional partnership because of the protection from liability it offers to its directors / shareholders (the 'corporate veil'). While this argument still stands, a recent case, ironically brought by a partnership, has highlighted the chink in the corporate 'armour' which allowed a claimant to pursue the directors of a company directly.

The case is P*almer Birch (A Partnership) v (1) Michael Lloyd (2) Christopher Lloyd* [2018] EWHC 2316 (TCC).

Background

The claimant, Palmer Birch (PB) was a building firm specialising in renovating large properties. It entered into a JCT contract with Hillerson House Limited (HHL) to renovate the residence of Christopher Lloyd (CL), who was a shareholder and director of HHL along with his brother Michael Lloyd (ML).

The freehold of the property was held by a Cypriot company, Seizar Holdings Limited (SZL). CL was the sole beneficial owner of SZL. The leasehold of the property was owned by HHL, who received considerable funding from SZL in order to pay the cost of the refurbishment. In an attempt to avoid making payment to PB it was alleged that CL and ML colluded to liquidate HHL prior to completion of the works.

The Claim

PB issued proceedings against the defendants in their personal capacities, relying upon three economic torts : (i) inducing breach of contract; (ii) unlawful means conspiracy; and (iii) unlawful interference.

PB argued that HHL's finances were significantly interfered with by CL to bring about the liquidation of the company which resulted in an inability to make payment under the contract.

The defendants argued that PB had entered into a contract with HHL with the knowledge that it was dependant upon third party funding from SZL and it was therefore unjustified in trying to pierce the corporate veil. They maintained that HHL did not have sufficient funds to make payment and they were justified in putting it into liquidation. The defendants also claimed that no loss was caused to PB, as HHL did not have the funds to pay and the fact that it was put into liquidation did not change this.

Decision

It was held that the CL was liable for inducing breach of contract as he caused HHL to breach its contract with PB by instigating the liquidation of HHL. The court held that CL had 'crossed the line' and his actions amounted to an inducement to breach the contract with PB rather than merely preventing it being complied with. The judge held that CL abused the concept of separate corporate personality and the defence of justification and 'no loss' failed because it was concluded that he was motivated purely by commercial self-interest.

Further, both defendants were held liable for unlawful means conspiracy due to their collusion to bring about the repudiatory breach of contract by liquidating HHL. On the evidence it was found that the defendants had reached an agreement to facilitate HHL's liquidation in order that it could depart from the contract and escape claims made against it.

The claim for unlawful interference failed against both of the defendants. It was held that although immoral, there was nothing 'unlawful' about the first defendant ceasing to fund HHL.

What does this mean?

This case highlights circumstances where the court will be willing to hold the directors of a company liable for the debts of a company. In essence, if actions are taken in relation to a company by a director of that company for an improper purpose and/or for personal gain then the court can find that they are personally liable for damages to a third party who has been harmed. The director is not able to hide behind the corporate veil.

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