

Supreme Court refuses to pierce the corporate veil regarding employers' liability

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CATEGORY:
ARTICLE

In *Campbell (Appellant) v Gordon (Respondent) (Scotland) [2016] CSIH 11*, the Supreme Court dismissed an appeal, upholding the decision of Court of Session (Inner House) not to attribute civil liability to the directors or officers of the company, where there was no such liability under The Employers' Liability (Compulsory Insurance) Act 1969 ('the Act').

Background

An apprentice joiner (C) suffered an injury during the course of his employment whilst using an electric circular saw. His employer, of which (G) was the sole Director, had failed to adequately insure him in breach of the company's obligation under Section 1(1) the Act. G was responsible for the day to day operation of the company and although his company had an employers' liability insurance policy in place, the policy excluded claims arising from the use of woodworking machinery powered by electricity. This excluded any claim arising from C's accident. The company then went into liquidation in 2009.

C appealed against the decision that G was not liable to C in damages for personal injuries suffered in the accident, as he was not covered under the inadequate insurance policy. The question before the Court was whether civil liability attached to G as a Director of the employing company for the failure to provide adequate insurance.

Judgment

The appeal was dismissed with a 3-2 split at Supreme Court level, showing that this area of law is far from established, and potentially subject to change over the coming years.

The argument centred around Section 5 of the Act, which the Court decided did not impose a duty to insure on a director or other officer as such, let alone any civil liability for failure to do so. It was accepted that as a general rule, where a statute imposes an obligation and imposes a criminal penalty for failure to comply there is no civil liability.

The majority said that the formulation is an obligation created by statute, binding in law on the person sought to be made liable and that there is no suggestion in that or any other authority that a person can be made indirectly liable for breach of an obligation imposed by statute on someone else. They went on to say that the only basis for looking through the corporate veil, is where it is expressly or impliedly justified by the statute.

There were questions as to whether the directors and other officers of the company should be liable, as a company only acts through its officers. It was held that directors are not in general liable for the tortious actions of the company as it does not detail the liability of officers to third parties for its acts or failures. The Judges also said the Court should pay due respect to the language and structure used by Parliament, rather than to preconceptions of what its objectives could or should have been, as the wording was deliberately chosen and it intended to mean what it said.

Those dissenting were of the opinion that 'the legislation was plainly intended for the protection of employees' and not necessarily about the words in which the drafter used as to whether directors of the company could be criminally liable. A further comment was that 'the protection intended was that [employees] should be compensated for their injuries, even if, for whatever reason, the employer was unable to do so. Failure to insure means that the employee is denied the very thing that the legislation is intended to provide for him! This argument to look beyond the specific wording and look at the intention of the Act, which is to provide protection for employees, shows the belief that it would be acceptable to pierce the corporate veil so as to achieve the desired outcome.

What does this mean going forward?

The decision of this case is highly important, demonstrating that at present, the Court is still careful not to pierce the veil of corporation. There have been some civil cases where it appears that the Courts have been willing to pierce the corporate veil. That has not been the case here as the Court has found these cases to be unique on their facts.