Legal Update

INED Directors held personally liable for Company Fraud

The recent Irish case of Powers v Grey Mountain Management Company 2022 IEHC 599 has set an interesting, and potentially landmark, precedent of finding that individual directors were personally liable for a fraud committed through the company they had been appointed to.

Background

In this case Greymountain was an Irish based company that acted as the “key middleman” to an international fraud valued at approximately €186 million. The Court was required to determine whether the corporate veil should be lifted and the Directors found personally liable for the acts of this company. It was acknowledged by all parties that Irish Courts have a reluctance to pierce the corporate veil, because of the well-established principle that a company is a separate legal entity from its directors as established in Salomon v Salomon [1897].

Traditionally courts have only found directors liable for the debts of a company if there was a fraud or misapplication of monies committed by the director with a clear link established by the court between the actions of the directors and the fraud. For example in the case of Dublin County Council v Elton Homes Ltd, it was held that if there was a clear link that the directors had “*syphoned off large sums of money out of the company, so as to leave it unable to fulfil its obligations, the court might be justified in lifting the corporate veil*.”

Facts

Greymountain received credit card payments from a large number of “investors” in what actually transpired to be a fraudulent acheme. The alleged fraud arose in the context of a scheme where individual ‘investors’ were led to believe that they were trading financial instruments known as binary options. The fraudulent scheme was carried out through call centres in Israel with a veneer of legitimacy provided by the fact that Graymountain was a company incorporated in Ireland giving the impression that the invested funds were in the hands of an EU regulated entity. In reality the two Irish directors had no real involvement with the Company - one had a purely quasi secretary administrative role, and the other was a college student with no direct involvement in operations.

Impropriety

The Court noted that it was already established that where there is impropriety in the conduct of a director in handling the affairs of the company, the veil of incorporation may be pierced and they may be found personally liable. Further the Court found that, in this instance, the complete and total disregard of the extent to which the Director had no idea of what the company he was managing was actually doing was sufficient impropriety of conduct for him to be held personally liable. All three Directors, Managing Director and two Shadow Directors of the Company where found to be personally liable for the Company debts arising from the fraudulent activity.

The Court held that the defendants had failed to observe their basic duties as directors because:

- They failed to inform themselves about the nature of their duties as director (or if they did, they ignored those duties)
- They failed to acquaint themselves with the affairs generally of Greymountain and
- They failed to exercise appropriate supervision or oversight at a board level in respect of the execution or discharge of whatever tasks or functions have been properly and appropriately delegated to others.

Findings

The Court found that where the only purpose of the Company was to act as an instrument of a massive fraud, it would be unjust were it not to lift the corporate veil and find the directors personally liable for their role in committing or facilitating this fraud.

Mark Browne
Partner
Email: markbrowne@clerkinlynch.com
Phone: 01 611 4400

Tom Blake