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Commercial Litigation Insights: Beyond the Veil: A Reminder from the Court of Appeal that Corporate Separateness is the Rule

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By , Kayla Theeuwen and Max Skrow

Corporations are separate legal persons, capable of suing and being sued, much like natural persons. Unlike natural persons, however, corporations cannot direct their own actions. Instead, their decisions and actions are governed by boards of directors and carried out by officers, employees and agents. Despite this, not every decision made by the director of a corporation exposes them to personal liability. As in many other Provinces and common law jurisdictions, the rule in Ontario is that directors of a corporation are only liable for the actions of the corporation in select circumstances, absent which the Court will not "pierce the veil" between a corporation and its controlling mind to hold corporate decisionmakers responsible for the actions of the corporation. The recent decision of the Ontario Court of Appeal in *1417217 Ontario Inc. v River Trail Estates Inc.*[1] provides a helpful and illustrative reminder.

At issue in *River Trail* was a property development joint venture between two individuals: Mr. Suleman and Mr. Sharma. Mr. Sharma passed away in October 2009, after which Mr. Suleman agreed with Mr. Sharma's widow and daughter to sell their remaining joint venture property and wind down the joint venture. During this wind-down, Mr. Suleman demanded the repayment of money allegedly overpaid to Mr. Sharma. Mr. Sharma's widow and daughter refused to pay any money to Mr. Suleman until Mr. Suleman (himself an accountant) fully accounted for the joint venture and demonstrated that Mr. Sharma had been overpaid. No accounting was forthcoming, so when the last of the joint venture lands was sold by River Trail Estates Inc. (a holding corporation of which Mr. Sharma's daughter was the sole officer and director), the company refused to pay the proceeds into the joint venture, and instead directed them to 2132161 Ontario Inc., a corporation wholly owned by Mr. Sharma's widow.

Mr. Suleman responded by suing Mr. Sharma's estate, his daughter, his widow, and River Trail Estates Inc. (among others). Mr. Suleman sought to hold Mr. Sharma's estate, daughter and widow personally liable for River Trial Estates Inc.'s transfer of sale proceeds to 2132161 Ontario Inc. Mr. Suleman did not name 2132161 Ontario Inc. as a defendant.

Mr. Sharma's estate counterclaimed against Mr. Suleman, alleging that he had misappropriated joint venture funds for himself and seeking to set off amounts owed by Mr. Suleman against any amounts owed by the estate. The estate asserted that this constituted corporate oppression and sought a complete accounting of the financial affairs of the joint venture.

Following a lengthy trial, the trial judge found that discrepancies in the joint venture's accounting records prepared by Mr. Suleman constituted corporate oppression. To remedy this oppression, the trial judge ordered the accounting sought by the estate. The trial judge also found River Trial Estates Inc. liable for failing to pay sale proceeds into the joint venture, as it was contractually required to do.

However, the trial judge went much further. In particular, the trial judge:

1. dismissed the estate's set-off claim for lack of proof, despite ordering an accounting of the joint venture which may yet prove that the estate is owed money;
2. concluded that River Trail Estates Inc. owed an *ad hoc* fiduciary duty to the joint venture to pay the sale proceeds to the joint venture, and that Mr. Sharma's daughter, in her capacity as trustee of his estate, owed a contractual obligation to use her position as a director of River Trail Estates Inc. to cause it to pay the sale proceeds into the joint venture, which duty she breached;
3. pierced the corporate veil between River Trail Estates Inc. and Mr. Sharma's daughter and held her personally liable for the wrongful conduct of River Trail Estates Inc.; and
4. pierced the corporate veil between Mr. Sharma's widow and 2132161 Ontario Inc, a non-party to the litigation.

The Defendants appealed, and on June 19, 2024, the Court of Appeal released its decision, authored by Justice Eileen Gillese. The Court granted the appeal, and in doing so addressed each of the points identified above:

1. The Court found that the trial judge erred by prematurely dismissing the estate's claim for set-off when those claims may yet be proven by the accounting.
2. The Court found that the trial judge erred by concluding that River Trail Estates Inc. owed an *ad hoc* fiduciary duty to the joint venture. The Court agreed with the trial judge that River Trail Estates Inc. owed a *contractual* duty to do so, but found that there was no evidence to justify the leap from a contractual duty to a fiduciary duty;
3. The Court found that the trial judge erred in concluding that Mr. Sharma's daughter, in her capacity as trustee of his estate, breached a duty to cause River Trail Estates Inc. to pay the sale proceeds into the joint venture. Rather, she was acting solely in her capacity as the sole director of River Trail Estates Inc. when she caused it to transfer the sale proceeds to 2132161 Ontario Inc., meaning she could not bear any liability on the part of the estate.
4. The Court found that the trial judge erred by piercing the corporate veil to hold Mr. Sharma's daughter personally liable for River Trail Estates Inc.'s actions. The Court held that the trial judge erroneously pierced the corporate veil, given that River Trail Estates Inc. was incorporated for a legal, proper purpose (to hold joint venture property) and was not used as a shield for fraudulent or improper conduct.
5. The Court held that it was not open to the trial judge to pierce the corporate veil of 2132161 Ontario Inc. to hold Mr. Sharma's widow personally liable because 2132161 Ontario Inc. was a non-party against which no allegations of wrongdoing were made.

The crux of the Court's decision in *River Trail* is that in order to hold an individual director liable for the actions of a corporation, it is imperative that one (i) names the corporation as a defendant, and (ii) particularizes claims against the individual director which are either distinct from the claims against the corporation, or which show that the corporation was established for a fraudulent or improper purpose or used as a shield for improper conduct by the director. If either of these criteria are not met, liability will not flow through from the corporation to its directors.

River Trail serves as an important reminder that when seeking to hold corporate directors liable in complex commercial and corporate litigation, litigants and their counsel must have regard for the doctrine of corporate separateness and must take care to name the proper corporate defendants and plead sufficient particulars to establish the personal liability being sought.

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relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

[1] 2024 ONCA 491 ("**River Trail**").

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