



Marvin Huberman

Communicate clearly

“What we’ve got here is failure to communicate.”
— 1967 film, “Cool Hand Luke”

The recent British Columbia Court of Appeal decision in *Pageant Media Ltd v Piche* is a cautionary tale illustrating the need for clear communication when entering into a contract, especially on behalf of a corporation.

To avoid personal liability, employees, agents, officers and directors who are acting as representatives of a company MUST identify the company as the contracting party. Otherwise, third parties are entitled to assume that these people are contracting on their own behalf rather than as agents for the corporation.

In *Pageant Media*, the defendant, Chris Piche, the president and chairman of CWC Gaming SA, a limited liability company incorporated under the laws of Costa Rica, was found personally liable under a contract with the plaintiff company, Pageant Media Limited, to provide advertising services in its magazine, “eGaming Review”.

The main issue before the Court was with whom the plaintiff entered into that advertising services contract; with CWC Gaming SA or with Piche personally.

The lower court decision

The defendant argued that he should not be personally liable since he contracted on behalf of CWC Gaming SA, a limited liability corporation, when he signed the contract, although the purchaser in the contract was identified as “CWC Gaming” without specifying that it was a limited liability company. He further contended that, although he never told the plaintiff that CWC SA was a limited liability company, and that the correspondence between the parties did not use the corporate designation “SA” or “Ltd” or “Inc”, the plaintiff knew, or should have known, that it was dealing with a limited liability company.

The defendant brought a summary judgment application for dismissal of the plaintiff’s claim, and the plaintiff brought a counter-application for judgment against the defendant for \$28,880.30.

The motion judge heard both applications and found the defendant personally liable under the advertising services contract with the plaintiff. The judge held that there was “a duty to advise the plaintiff that they were dealing with a limited liability company” and that this duty was not fulfilled because the contract, correspondence, invoices, and even the defendant’s business card all referred to CWC Gaming or CWC, and not to CWC Gaming SA, being the appropriate designation for a limited liability company from Costa Rica.

The court of appeal majority decision

The majority of the BC Court of Appeal concluded that the burden of proof to show that Pageant Media contracted with Piche’s company, CWC Gaming SA, and not with himself personally rested with Piche. Indeed, Pageant Media was not required “to lead evidence that it did not know it was dealing with a limited liability company except in response to Piche’s evidence to the contrary.”

The majority justices further concluded that:

“The obligation to disclose that one is acting on behalf of a corporate principal exists whenever one seeks to rely on that limited liability; it is only the content of the obligation that may vary with the circumstances. For instance, that obligation may be met on the face of the agreement itself...”

The Court then held that the evidence presented by Piche failed to satisfy the burden of demonstrating that Pageant Media knew or ought to have known that he was acting solely as an agent for a limited liability company. In consequence, he was found personally liable.

Points to communicate clearly

When a person signs a contract as an agent for a limited liability company, he or she has the onus to advise the third party of this fact, in default of which that person when sued may not be allowed to hide behind “the corporate veil” and is very much at risk of being personally liable.

Make it clear on the face of the contract when signing on behalf of for example, “ABC Distributors Ltd” that only the limited liability company will be liable and that there is no personal liability.

Indicate on all relevant contractual documents, correspondence, invoices, cheques, and business cards, that the entity with whom the third party is dealing is a limited liability corporation whom the individual is representing as its agent, and not in his or her personal capacity.

Pay close attention to pertinent statutory provisions that govern the subject contract which may be analogous to, for example, Sections 10, 11 and 21 of the Ontario Business Corporations Act, R.S.O. 1990, c.B.16 at www.canlii.org.

MM&D

Marvin J. Huberman, LLM, (www.marvinhuberman.com) is a Toronto trial and appellate lawyer, mediator and arbitrator.