



Fraudulent actions

BC court gives transportation industry a wake-up call

In the recent case of *WS Leasing Ltd v Platinum Equipment Ltd*, the Supreme Court of British Columbia held two directors of a corporation personally liable to pay approximately \$500,000 compensatory and punitive damages, plus interest and legal costs, for committing the tort of deceit by making fraudulent misrepresentations in connection with a sham transaction entered into through their corporation in order to obtain funds from the plaintiff.

The Claim

The plaintiff, WS Leasing Ltd, whose business was equipment lease financing, sued Platinum Equipment Ltd which procured and sold heavy equipment, including trailers and shipping containers, and two of its directors, Dennis Fanning and David Knott (the “individual defendants”), who were involved in Platinum’s daily operations and sales transactions.

WS Leasing claimed the individual defendants acted deceitfully and made fraudulent misrepresentations for the purpose of obtaining funds from it. Specifically, they purported to sell to it 40 steel shipping containers through their corporation, Platinum, and that the sale transaction was a sham.

The plaintiff further claimed that in reliance on the misrepresentations made by the individual defendants, it paid Platinum funds to purchase the shipping containers. WS Leasing claimed that when the individual defendants made the representations, they knew Platinum did not have the containers in its possession, nor could it deliver them.

The Defence

Fanning and Knott took the position that their corporation, Platinum, was liable for the debt, and since they were acting through a limited liability corporation, there was no basis for finding them personally liable. They maintained there was no fraud or deceit on their part.

The Issues

The Court dealt with two issues:

- Should Fanning and Knott be held personally liable for monies paid by WS Leasing to Platinum
- What, if any, damages should be awarded against Fanning and Knott?

The Law

The Court had to take into account a number of factors in this case including the proper award for a victim of fraudulent misrepresentation, and the differences between reckless representations and wanton disregard.

The Decision

The Court concluded that Fanning and Knott should be held personally liable for the monies advanced by WS Leasing to Platinum—approximately \$500,000—and it awarded punitive damages against Fanning and Knott in the amount of \$5,000 each.

The Court did not find Fanning or Knott to be credible witnesses. Based on evidence at the trial, the Court found:

- Knott and Fanning acted together to create documents that indicated Platinum was in possession of 40 containers and in a position to pass title to them, when they knew that was untrue. They provided those documents to Witt and WS Leasing, knowing that WS Leasing would rely on the representations contained in the documents, which they knew were false;
- At the time Knott picked up the cheque from WS Leasing, he knew Platinum was not in possession of the containers, some of the containers were not manufactured, and Platinum was not able to transfer title of the containers to WS Leasing;
- Knott picked up the cheque personally and deposited it into Platinum’s bank account, knowing Platinum was not in a position to deliver title to the containers to WS Leasing;
- WS Leasing would not have issued the cheque without receipt of the invoice and NVIS forms;
- The fraudulent representations made by Fanning and Knott were material inducements to the decision to release the cheque;
- Fanning and Knott committed the tort of deceit by making fraudulent representations to WS Leasing, which they intended WS Leasing would rely on to its detriment. The amount of the loss suffered by WS Leasing was \$490,974.80, and there would judgment against Platinum, Fanning and Knott, jointly and severally, in that amount;
- The individual defendants’ conduct was reprehensible and the knowing falsification of documents by dealers of products should be deterred.

Based on the evidence and the application of the law to the facts as found by the trial judge, punitive damages were awarded against each of Fanning and Knott in the amount of \$5,000.

The Court held in the circumstances a punitive damage award was appropriate, notwithstanding that punitive damage awards are an exceptional remedy.

This case is a wake-up call for directors and officers of limited liability corporations. The message is: recognize the limits of the limited liability and heed the call or pay the price for failing to do so. **MM&D**

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