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Legal advice in black and white

06 October 2016

Professions and Financial Lines Brief

Welcome to the latest edition of Professions and Financial Lines Brief.

In this edition we review:

- A High Court decision that an arbitrator can award the costs of third party litigation funding.
- A Court of Appeal decision that may deprive valuers of causation arguments.
- The implications for business of developments in social media.
- The impact of negative interest rates, including the growing market in peer-to-peer lending.
- Deferred prosecution agreements and related coverage issues.
- A Supreme Court decision on piercing the corporate veil.

As always, we hope you enjoy reading this edition and welcome your feedback.

Jenny Boldon, Partner

Articles

Arbitration: litigation funding costs

An arbitrator's general power to award costs includes the power to award the costs of third party litigation funding - *Essar Oilfield Services Ltd v Norscot Rig Management Pvt Ltd* [15.09.16]

The High Court has held that an arbitrator's general power to award costs includes the power to award the costs of third party litigation funding, on the basis that these are "other costs of the parties" within s.59(1)(c) Arbitration Act 1996 (the Act).

In doing so, the court appears to have significantly extended the scope of recoverable costs in arbitration proceedings. The court did not consider itself constrained, in interpreting the Act, by what a court would allow by way of costs in litigation under the Civil Procedure Rules (CPR).

Background

The underlying dispute was a contractual one concerning breach of an operations management agreement between Essar, the owner of an offshore drilling rig, and Norscot, acting as the rig's operations manager.

Norscot initiated arbitral proceedings against Essar under the ICC Rules. Having succeeded in the arbitration, Norscot sought its costs from Essar. It included within the claim for costs the costs of the litigation funding that it had been forced to incur in order to pursue the claim. The third party funding costs amounted to £647,000. This had been advanced on the basis that if Norscot was successful it would repay the greater of either 300% of the amount advanced or 35% of the sum recovered.

The arbitrator held that Norscot was entitled to the litigation funding costs.

Essar disputed the finding, on the basis that the arbitrator had exceeded his powers in making this award as third party funding costs fell outside the scope of the relevant provision of the Act, and this amounted to a serious irregularity. Essar argued that what the Act sought to deal with were "costs of the arbitration" whereas third party funding was not a cost of the arbitration but a cost of funding the arbitration, which was distinct.

Decision

His Honour Judge Waksman QC dismissed the appeal. He held that Norscot's litigation funding costs were recoverable in principle pursuant to s.59(1)(c) of the Act and Article 63(3) of the ICC Rules.

HHJ Waksman accepted that the correct test to be applied when considering the scope of s.59(1)(c) was a "functional one" and required consideration as to whether the costs being sought

were incurred in bringing or defending the claim. There was nothing in the language of that clause and the words "other costs" which precluded third party litigation funding, and accordingly there was no basis for a narrow construction to be applied. He expressly rejected Essar's submission that the relevant section of the Act had to be construed by reference to what a court would or could allow by way of costs in litigation under the CPR. The relevant context for consideration was the Act alone.

Implications

Whether to award costs under the Act is always a matter of discretion for the arbitrator.

The arbitrator's award in this case appears to seek to address an imbalance of power between the parties, on the basis that Essar had deliberately put Norscot in a position where the only manner in which it could fund the arbitration was by use of a third party funder. The arbitrator considered there would be substantial injustice in denying Norscot recovery of the costs of securing third party funding. The High Court has now confirmed that the Act is sufficiently broad, as a matter of construction, to permit this recovery as part of the arbitrator's general costs discretion.

Insurance coverage disputes are frequently to be resolved by way of arbitration in accordance with policy terms. Insurers could now face greater exposure for costs associated with disputes with their insureds, where insureds obtain litigation funding.

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Surveyors' negligence: no more 'but for'?

Tiuta International Ltd v De Villiers Surveyors Ltd [01.07.16]

Court of Appeal decision may have removed the 'but for' test depriving valuers of valuable causation arguments.

Background

The case concerned a development in Sunningdale which the defendant (De Villiers) valued twice for the claimant, a lender. Initially, the lender made just over £2.56 million available to the borrower, on the strength of De Villiers' first valuation of the site in February 2007 at £3.25 million and £4.9 million on completion. Within seven months the borrower required more money and applied for a loan of just over £3.088 million.

In December 2011 the lender instructed De Villiers to value the site once again. De Villiers valued the site at £3.5 million in its current condition and £4.9 million on completion. The lender therefore advanced the borrower the same amount (i.e. £2.56 million) and provided it with the

option to draw down further funds. Crucially, it did so by proposing to refinance the entire loan, as opposed to extending the existing agreement.

The lender opened a new account containing an advance of £2.56 million to repay the original amount, drew up a new agreement and even registered a new charge at the Land Registry. The new loan was not repaid at expiry of the new facility. Receivers were appointed and the site sold, leaving the lender with a loss.

Proceedings were issued against De Villiers alleging negligence, not in relation to the first valuation but only the second valuation. De Villiers applied for summary judgment, arguing that its liability could not exceed the amount by which the borrower's indebtedness had increased as a result of the refinance.

At first instance the High Court found in favour of De Villiers.

Decision

The Court of Appeal allowed the lender's appeal (with one dissenting judgment).

It held that the transaction based on the second valuation was a refinance that paid off the existing debt in its entirety. That should have been reflected by the judge at first instance when he applied the 'but for' test.

The pre-existing debts should therefore be ignored for the purposes of assessing De Villiers' liability. De Villiers should not be in a position to take advantage of the legitimate working practices of the bank to escape the damages which were properly within the scope of its duty.

The dissenting judgment (from Lord Justice McCombe) focused on the hypothetical nature of the refinance and the fact that the first valuation, which committed the lender to the development, was not the subject of criticism.

Implications

The publicity which the case is attracting may encourage some lenders to be more bullish in their approach to existing claims. It may even result in a few new claims.

However, it is important to put the judgment in context. The decision is fact specific, to a development where only one of two valuations is criticised. More importantly, all three judges commented (with some dissatisfaction) on the manner in which the issue had come before them.

De Villiers had applied for summary judgment. In order to do so it was obliged to concede certain facts for the purpose of the application. These included not just the fact that its valuation was negligent but also that the first loan had, as a matter of fact, been repaid in its entirety. De Villiers intended to challenge this at trial. In the vast majority of cases where the refinance is no more than an extension to the existing loan it may be difficult for the lender to prove repayment as a matter of fact.

The decision is to a large extent a result of the assumptions which the Court of Appeal was required to make in the lender's favour. It could even work in a valuer's favour. If later loans are fresh transactions, then those which were obtained without the benefit of advice may be said to extinguish any liability arising out of loans provided earlier on – where advice was relied on.

Valuers may wish to amend their terms and conditions to restrict their liability, when valuing for the purposes of a refinance, to the increase in the indebtedness.

It has been suggested that the case could have wider implications for other professions. We question this given the fact specific nature of the decision and the assumptions behind it.

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Fintech developments: impact of social media

The impact of technology on business is ever increasing: insurers will have on their radar the potential operational and regulatory consequences for their insureds.

The Financial Conduct Authority (FCA), and its predecessor the Financial Services Authority (FSA), have been seeking to keep abreast of the role of social media in financial promotions for some years now.

FCA guidance

In 2014, when considering peer-to-peer (P2P) lending (i.e. loan-based crowdfunding), the FCA noted it would be updating its guidance on financial promotions offered on social media. The guidance was finalised in March 2015 and covered:

- Blogs
- Microblogs (e.g. Twitter)
- Social and professional networks (e.g. Facebook and LinkedIn)
- Forums
- Image and video-sharing platforms (e.g. Pinterest and YouTube)

In the guidance, both the popularity of social media and the constraints (for example the length of video or number of characters in text) are discussed.

This remains a difficult area for the FCA to stay up-to-date with, given the rate at which new apps are developed. Accordingly, it has sought to alert regulated entities to the fact that any form of communication is capable of being a financial promotion. Insureds must be mindful of this when using social media. This will continue to be an evolving risk area for independent financial advisers (IFAs) and insureds in the financial sector generally, particularly as regards risk warnings and adequate record keeping.

P2P lending

Social media is now itself playing a role in P2P lending as a credit referencing tool.

A new site called FriendlyScore is advertising itself as facilitating P2P online lending and using social media to assist in credit referencing. The site performs user-permissioned checks of individuals' LinkedIn, Twitter, Instagram and Facebook accounts and will shortly be adding PayPal to its resources. Interestingly, FriendlyScore reports that it is presently active in a variety of lending markets including the UK, Germany, Holland, Poland, Romania, Brazil, South Africa, Nigeria, India and the Philippines.

Whilst arguably these steps are just an extension of existing know your customer (KYC) obligations, it will be interesting to see what impact social media has on financial lines insureds and on how data protection is managed, in view of the increased amount of personal data that these checks may expose.

The General Data Protection Regulation (GDPR) takes effect in May 2018. Companies are preparing to ensure that they will comply with the new strict data protection regime, in large part introduced to deal with the challenges of social media. Non-compliance will result in potentially severe penalties of up to 4% of global turnover. The GDPR will apply to any company that handles EU citizens' data, even if that company is not based in Europe – which, following Brexit, will be the UK's position.

Litigation funding

Social media is also influencing litigation more broadly, through social media driven crowdfunding of high profile cases.

Representatives for junior doctors have used the CrowdJustice platform for raising in excess of their £150,000 target to fund a legal challenge to the imposition of the new NHS contract. Meanwhile, another social funding platform, FundRazr sees the convicted UBS trader Tom Hayes seeking to fund a further appeal of his case to the Criminal Cases Review Commission, an independent organization set up to investigate suspected miscarriages of justice.

Whilst these crowdfunding sites are akin to P2P businesses, they are distinguished by the charitable nature of the appeals. In the future, however, we may see crowdfunding of shareholder class actions, which would be likely to attract regulator attention if they were structured as an investment vehicle.

Digital money

Meanwhile, digital money is increasingly moving into mainstream finance. Barclays Bank announced in August 2015 that it intended to allow charities to accept donations from its customers via bitcoin, the electronic currency. In April 2016, Barclays announced it was partnering with the American company, Circle Internet Financial Ltd, to allow it to use Barclays' infrastructure, potentially enabling users to exchange sterling and dollars immediately and without charge.

Various financial institutions are now reported to be exploring the introduction of digital currencies to clear and settle financial trades using blockchain, the financial ledger entry system underpinning bitcoin. Banks including UBS, Citi, Deutsche Bank, Santander, BNY Mellon and Goldman Sachs are looking at using so-called cryptocurrencies to be traded and verified electronically, with the aim of reducing post-settlement clearing time and costs. The switch to these electronic currencies may come as early as 2018. This may be of interest to financial institutions underwriters when considering the risk profile of their insureds.

Comment

Technological advances are likely to continue apace as companies seek to gain and maintain a competitive edge and deliver greater customer satisfaction.

Insurers should be liaising with insureds, and their brokers placing policies, to seek to properly understand the insured's use of technology, digital marketing and social media, and whether its data protection procedures are adequately up to date and on course to be GDPR compliant.

Insurers should also seek to clarify any involvement with crowdfunding platforms and proactively discuss digital currencies with financial institution insureds and brokers. This will help to identify risk management issues relevant to the writing, and wording, of policies.

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Negative interest rates: issues for insurers

Negative interest rates have a direct impact on insurers both in terms of their investment strategies and the impact on the risks they are writing. We review alternative investment approaches and predict risk management and claims trends.

Some eight years after the financial crisis began, the climate of economic uncertainty continues. In 2014, the European Central Bank (ECB) began a policy of negative interest rates, in effect charging banks a levy for the privilege of holding their funds within the Eurozone's 19 central

banks. Since then other central banks have followed suit, including those in Sweden, Switzerland and, earlier this year, Japan.

This policy, which is reported to have cost banks around €2.64 billion since 2014, is intended to spark economic growth by giving banks the incentive to lend money out to businesses and into the wider economy, instead of holding on to it.

In August 2016 the Bank of England reduced the base rate, the benchmark for interest rates in the UK, for the first time in seven years to an all-time low of 0.25%. With interest rates on customer deposit accounts already low, this has triggered further rate reductions by banks. It remains to be seen whether banks will increase their lending activity, as the ECB hopes, or whether they will simply seek to pass on the deposit charges to customers, which would potentially undermine any positive effect of the rate reduction on the broader economy.

Alternative approaches

Reports indicate that private banks and investors are now looking for ways to avoid having to pay these deposit charges with Eurozone banks and/or to locate investments which yield more attractive rates. Options include the following:

- **Stashing the cash**: one alternative is to stockpile cash in their existing vaults and/or arrange the transfer of funds to outsourced vault facilities. The storage and transport of funds may pose a significant additional risk to corporate insureds and their insurers, particularly under crime policies where employee infidelity and goods in transit cover are standard. Insureds should take steps to reduce the risk of losses as far as possible.

- **P2P lending**: an attractive investment area for both private and institutional investors may be peer-to-peer (P2P) lending (i.e. loan-based crowdfunding) which has grown to be a sector valued at around £2.7 billion. P2P lending is, in particular, servicing a need for reasonable loan rates for small businesses, which the banks are currently not meeting.

P2P lending: regulation

The regulatory remit of the Financial Conduct Authority (FCA) was expanded to include P2P lending in 2014. In July 2016, the FCA reported that it had more than 80 applications for approval outstanding, with only nine firms presently approved as P2P lenders and widespread calls for tougher regulation of so-called 'alternative finance' providers.

Meanwhile, insurers offering cover to P2P lenders/platforms, and independent financial advisers (IFAs) advising consumers in the alternative investment sphere, may also take note.

The FCA has introduced a new regulated activity, specifically catering for advising clients on P2P agreements. It has also issued warnings concerning the high risk nature of these investments, in particular given that investors have no recourse to the Financial Services Compensation Scheme, the compensation provider of last resort for regulated investments.

Insurers of IFAs should be aware that their insureds may face claims where there has been inadequate documentation and explanation of the risk factors posed by P2P lending/investment. With the FCA set to revise the existing guidance on P2P investments in the months to come, we would expect IFAs and P2P businesses to closely monitor this area and identify any issues to their insurers on placing/renewal.

Lord Adair Turner, former chairman of the Financial Services Authority (the FCA's predecessor), has warned that consumers are taking huge risks when lending via P2P. He commented earlier this year that:

"the losses on peer-to-peer lending which will emerge within the next five to 10 years will make the worst bankers look like absolute lending geniuses".

Pension fund trustees/fund managers

Insurers of pension fund trustees will note that the current interest rate environment, paired with the UK's recent decision to leave the European Union, is also having a detrimental effect on pension funds. The Pension Protection Fund (the fund of last resort for pensioners whose employers become insolvent) recently reported that the aggregate UK pension deficit has ballooned by £114 billion since the end of May 2016, and is now at a new record high of £408 billion.

Pension fund trustees will no doubt be revisiting the appropriateness of their investment strategies. They will also need to consider what advice they should be providing to individuals within their schemes as to the appropriate level of pension contributions to ensure that their pension funds are sufficient to meet their needs when they retire. Careful records should be kept of the advice they are receiving and giving, in case they later face criticism from individuals within their schemes.

Likewise, fund managers will be taking similar steps to ensure they mitigate the risk of claims from investors should client assets decrease in value.

Conclusion

A base rate increase does not appear to be likely in the short term. Whilst that remains the case, alternative investments such as P2P lending will be attractive to investors, despite the risks.

Any insureds involved with P2P should be alive to the risk of FCA scrutiny and to their obligations to customers. The FCA will be quick to call to account those whose conduct falls short.

For other insureds, whether fund pension trustees or fund managers, the pressure to deliver a decent return on investment will remain. Care must be taken to ensure that investment strategy is clearly agreed and documented, to assist in the event of client dissatisfaction.

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Bribery Act in action: deferred prosecution agreements

Deferred prosecution agreements (DPAs) are a new feature in the UK legal landscape. We provide an overview of recent developments and consider the implications for insurers.

DPAs originated in the United States (US) and have been utilised by the Department of Justice for some years. They were introduced in the UK in February 2014: the first DPA was agreed in October 2015 after some months of anticipation; and we have now seen a second DPA approved last month. Both concern offences under the Bribery Act 2010, which came into force in July 2011.

What is a DPA?

A DPA is a voluntary agreement reached between a prosecutor (in England, the Serious Fraud Office (SFO) or Crown Prosecution Service) and an organisation which could be prosecuted for a criminal offence. A judge must approve the terms of the DPA as "fair, reasonable and proportionate". The agreement suspends prosecution for a defined period, provided the organisation meets certain specified conditions. Where met, the prosecution is discontinued at the end of the DPA period.

The SFO is keen to stress that a DPA is not a plea deal or bargain with the company. It does, however, allow a company to atone for its misconduct and to keep trading (orders to wind up previously being common), to the benefit of its employees and the economy generally.

A DPA generally requires early and full cooperation with the prosecutor. Where cooperation is offered too late, a DPA is unlikely to be available and prosecution will follow.

Individuals cannot currently be party to a DPA.

First DPA: October 2015

The first DPA was agreed in October 2015 between the SFO and Standard Bank Plc, arising from Standard Bank's sister company Stanbic Bank Tanzania's payment of US$6 million to a Tanzanian local partner. The SFO alleged that the payment was intended to induce members of the Government of Tanzania to treat development proposals favourably. Charges were brought under s.7 Bribery Act for failure to prevent bribery.

Under the terms of the DPA, Standard Bank was required to pay:

- Financial orders of US$25.2 million.

- US$7 million to the Government of Tanzania in compensation.

- The SFO's reasonable costs of £330,000 in relation to the investigation and subsequent resolution of the DPA.

Full cooperation and submission to an independent review of Standard Bank's anti-bribery systems and controls were conditions of the DPA.

Second DPA: July 2016

Lord Justice Leveson approved the second DPA in July 2016.

The counterparty to the DPA is a UK SME that cannot currently be named due to ongoing, related legal proceedings. These related proceedings are criminal charges against former senior employees allegedly involved in the offences, following the admissions made by the SME and the material provided to the SFO on self-reporting. It is only once these criminal proceedings are concluded that the DPA and Leveson LJ's unredacted judgment will be published.

The indictment against the SME included charges under the Bribery Act of conspiracy to corrupt, conspiracy to bribe and failure to prevent bribery. The charges alleged systematic payment of bribes in foreign jurisdictions over the period 2004 to 2012.

Financial orders of £6.5 million must be paid, the majority in disgorgement of profits. One third of this will be paid by the SME's US parent, in recognition of the dividends received from the SME. The SFO decided not to pursue its costs, and offered a 50% reduction in the level of fine to be applied, in view of the company's financial position and also its early cooperation. As for the Standard Bank DPA, the SME has agreed to cooperate fully and also to report on its anti-corruption systems and controls for the duration of the DPA period.

In approving the latest DPA, Leveson LJ emphasised that the DPA was:

> "an example of the value of self-report and cooperation along with the introduction of appropriate compliance mechanisms".

The importance of early cooperation

The SME self-reported in January 2013 following concerns raised by its compliance team and an internal investigation by an independent law firm. Leveson LJ made it clear in his judgment that in self reporting, a company must disclose everything to ensure an effective investigation, even where that might lead to prosecution of individuals.

DPAs will not be offered in all cases. Last year the SFO declined to offer Sweett Group PLC a DPA, on the basis that its attempt to cooperate came too late. The company was successfully prosecuted earlier this year. However, speaking in early September 2016 at a symposium on DPAs, the joint head of bribery and corruption at the SFO, Matthew Wagstaff confirmed that as long as

the perpetrator cooperates with the authorities, DPAs will be acceptable even in the most serious cases of financial misconduct.

Early cooperation was also cited by the SFO as being a key determinant of the level of reduction of the financial penalty to be imposed. As matters stand, a one-third reduction is the maximum discount available to incentivise self-reporting. Even so, in the most recent DPA case cooperation was a factor in that discount being increased to 50%.

Implications

Insurers can expect to see highly confidential notifications from insured companies that identify an issue and wish to seek to negotiate a DPA. Alternatively, they may see some insureds seeking to recover costs associated from such a procedure after a DPA has been agreed and coverage for any related claims.

Potential tensions may arise where a company wishes to self-report but corporate admissions are likely to lead to individual culpability. Directors and officers (D&Os) and senior managers will need to carefully consider obtaining independent legal advice if they fear implication in economic crime. DPAs are public documents, but in the second DPA case discussed above the publication of information has been postponed so that senior employees will get a fair trial. Nonetheless, statements given in internal interviews, or to the SFO, will not attract legal privilege unless appropriate steps are taken, otherwise this evidence can be used in any criminal trial.

D&O insurers are likely to be asked to consider funding for D&Os for legal advice and representation during internal and SFO investigations, in addition to any potential criminal proceedings after DPAs have been entered into. There is likely to be greater clarity in policies for coverage for the latter than for internal investigations, but much will depend on the specific wording.

As DPAs become more common, it is likely greater certainty will be achieved in respect of coverage issues arising. However, in the short term there may be issues concerning timely notification (and provision of confidential information to insurers), funding of defence costs, consent and admissions generally.

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Directors and officers: piercing the corporate veil

In a decision which represents good news for directors and their insurers, the Supreme Court has highlighted the difficulties in piercing the corporate veil to recover directly from directors - *Campbell v Gordon* [06.07.16]

Legal background

It is settled law that a lawfully incorporated company has a 'separate legal personality' from its shareholders and directors, as laid down by the House of Lords in *Salomon v Salomon* [1896]. The result is that the obligations of a company are the company's alone. There is a veil separating the corporate legal entity and the people running it, which prevents the latter from being responsible for the company's liabilities.

Exceptions to this rule are made where a company becomes insolvent, in which case the veil can be lifted in certain circumstances. Aside from insolvency, if the company has been used as a sham or a façade, in the sense of being used as a device to circumvent liability, then a court will pierce the veil. However, it will only do so as far as is necessary to provide a remedy for the particular wrong which those controlling the company have committed. The court cannot, for example, pierce the corporate veil merely because it is thought to be necessary in the interests of justice.

Campbell v Gordon

In this Scottish case, Mr Campbell suffered a personal injury at work which was excluded from his company's employers' liability cover.

The company's failure to have in place appropriate insurance was in breach of its obligations under the Employers' Liability (Compulsory Insurance) Act 1969. Section 5 of the 1969 Act creates a criminal offence where an employer fails to appropriately insure an employee. Under s.5, directors may also commit a criminal offence if the failure was committed with their consent, connivance or facilitated by their neglect. However, this is not a direct responsibility, instead a director is "deemed to be guilty" of the offence committed by the company.

The company went into liquidation and Mr Campbell sought civil damages from the sole director of the company, Mr Gordon. The issue was whether civil liability attached to Mr Gordon for his personal failure to effect appropriate cover.

At first instance, the judge held that it would be too narrow a reading of the 1969 Act to determine that there was no obligation on a director to ensure that the employer had the relevant insurance in force. In addition, there was no reason to consider that a breach of that duty should not give rise to civil liability. This was overturned on appeal, on the basis the 1969 Act clearly imposed a duty to insure, which had to be seen as being for the benefit of a particular group, but that duty was imposed on the employer and not its directors.

Decision

In a split 3:2 verdict, the majority of the Supreme Court held that the 1969 Act did not impose a duty to insure on a director or officer, and the duty instead rested with the corporate employer. Parliament had recognised that a director could bear some responsibility for the failure to insure, but had dealt with it in the 1969 Act by imposing a specific criminal penalty linked to the criminal liability of the company. Lord Carnwath stated:

> "There is no basis in the case law for looking through the corporate veil to the directors or other individuals through whom the company acts. That can only be done if expressly or impliedly justified by the statute."

In addition, as a general rule, where a statute imposed a criminal penalty for failure to comply with an obligation, there was no civil liability.

Lord Toulson and Lady Hale, dissenting, held that the purpose of the 1969 Act is for a company's employees to have protection in the event of injury arising from their employment for which the company is liable. Lord Toulson said:

> "the pool of those bearing legal responsibility for seeing that such protection is in place is not confined to the company itself."

He commented that a formalistic approach was preferred by the majority. However, in his view that approach did not reflect the basic objectives of the statute and, on a criminal basis, the director is in law as guilty as the company of failing to insure.

Implications

It is recognised that the courts will intervene to pierce the corporate veil where a company is used primarily as a vehicle of fraud or as a means of escaping pre-existing legal obligations.

However, it is clear that the circumstances in which the courts are prepared to pierce the veil are limited. The Supreme Court was not prepared to extend them on this occasion, despite it arguably being in the interests of justice to do so to protect an employee who would not otherwise receive compensation.

This follows a similar Supreme Court decision in *VTB Capital plc v Nutritek International Corp and others* [2013]. In that case, it was held that the corporate veil could not be pierced in order to hold a non-contracting controlling party liable for its controlled company's contractual obligations. As in *Campbell v Gordon*, the court could find no authority for the proposition that a person could be made indirectly liable for breach of an obligation imposed by statute on another.

This latest decision is therefore good news for directors and their insurers. It confirms that, as a general principle, directors are not personally liable for their company's actions.

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