DIRECTORS' LIABILITY TO THIRD PARTIES

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CORPORATE PARTNER

THE SUPREME COURT'S JUDGMENT IN LIFESTYLE EQUITIES V AHMED

Authored by: Wilson Leung (Barrister) - Serle Court

This article examines the UK Supreme Court's decision in Lifestyle Equities v Ahmed [2024] UKSC 17, where the Court considered company directors' accessory liability for torts committed by their companies. Rejecting the existence of any special rules for directors, the Court affirmed that ordinary principles of tort liability were applicable, such that directors could incur accessory liability if they procured or participated in a common design with the company to commit a tort. However, the Supreme Court limited such liability by requiring directors to have knowledge of the "essential facts" rendering the act wrongful. This article ends by posing the question of whether too wide a net has now been cast over directors.

Introduction

When a company commits a tort and thereby causes harm to a third party, can the third party sue the company's directors for procuring or assisting in the company's wrongdoing? In practice this can be a vital question. The third party might have difficulty in obtaining recourse against the company (e.g. if the company is insolvent) and thus need to target the directors for compensation. It might also be easier for the third party to achieve a settlement if it is able to sue – and thereby put pressure on – the company's directors.

This question was the subject of weighty consideration in the UK Supreme Court's judgment in Lifestyle Equities v Ahmed [2024] UKSC 17, where Lord Leggatt JSC (giving the only judgment) clarified the principles underpinning directors' accessory liability.

Background

Lifestyle Equities v Ahmed arose from claims of trademark infringement brought by Lifestyle (the owner of the 'Beverly Hills Polo Club' trademarks) against several companies that had allegedly infringed those trademarks. Additionally, Lifestyle sued the directors of those companies (the Ahmeds). Lifestyle alleged that the Ahmeds were liable for their companies' wrongful actions and sought an account of profits against them.

At first instance, the High Court[1] found that the Ahmeds were jointly and severally liable with the companies for the acts of trademark infringement (which are torts), because they had authorised, procured, or engaged in a common design with the companies to do the acts. The judge held that the Ahmeds were liable to account for any profits which they had personally made from the infringements (though rejected Lifestyle's claim that the Ahmeds were liable to account for the companies' profits). This was upheld by the Court of Appeal.[2]

However, the Supreme Court allowed the Ahmeds' appeal, holding that they were not jointly liable with the companies.

No Special Exceptions for Company Directors

In reaching that conclusion, the Supreme Court[3] began by rejecting several arguments advanced by the Ahmeds.

The Ahmeds argued that, where directors have acted properly in performance of their duties to the company, then their acts are treated in law as the company's acts, and consequently they will not be held personally liable for the company's tortious acts.

However, this argument was rejected by Lord Leggatt, who emphasised that the ordinary principles of tortious liability – including accessory liability – were applicable to directors and they did not benefit from any special exception:

"I do not accept that there is any general principle of English law – whether of company law, the law of agency or the law of tort – which exempts a director, acting in that capacity, from ordinary principles of tort liability."[4]

Lord Leggatt observed that the Ahmeds' argument rested on a non sequitur which he termed the "dis-attribution fallacy". This was the notion that when a director acts in such a way that his action is attributed to his company, that act becomes the company's act and not his personal act. However, this line of thought was fallacious:

"It does not follow that, because an act done by a director or other individual is treated as the company's act for which the company can be held liable, the director is immunised from liability."[5]

The Ahmeds pointed out that, although a director could be held personally liable for procuring his company's breach of contract with a third party, it was well-established (under the "Said v Butt rule"[6]) that the director would not be liable if he had acted bona fide and within the scope of his authority. The Ahmeds argued that the same exception should apply where a director procured his company to commit a tort, and had acted bona fide within the scope of his authority. However, this contention was rejected by Lord Leggatt, who held that the "Said v Butt rule" was confined to procurement of breach of contract, and did not extend to procurement of tortious acts.[7]

Accessory Liability

Thus, to assess whether a director is liable for his companies' tortious acts, the court would apply the ordinary principles of accessory liability. Under such principles, a director could be liable in two separate ways. First, he could be liable for 'procuring' the company to commit the tortious act.[8] This would be the case if he procured, authorised, induced, or incited the company to commit the act. Second, he could be liable for participating in a 'common design' with the company to commit the tort, in which he had given his assistance.[9]

1 [2020] EWHC 688 (Ch)
2 [2021] EWCA Civ 675
3 [2024] UKSC 17
4 [33]
5 [35]
6 Said v Butt [1920] 2 KB 497, 506
7 [47], [54]-[57]
8 [76], [106]
9 [117]

Knowledge Requirement for Accessory Liability

However, the Ahmeds succeeded on the appeal because of the Supreme Court's view of the knowledge requirement for accessory liability in tort.

The lower courts had held that, for a tort of strict liability such as trademark infringement (for which the infringer can be liable even if it had no knowledge that it was violating a trademark), an accessory can likewise be held jointly liable even if he had no such knowledge.

Lord Leggatt held that this was incorrect: for an accessory to be liable, the accessory must have sufficient knowledge of the facts which make the primary infringer's act a wrongful one. This was the case even if the tort itself was one of strict liability. Lord Leggatt explained:

"…to be liable as an accessory for procuring a tort, a person must know the essential facts which make the act done wrongful, even if the tort is one of strict liability."[10]

This knowledge requirement was applicable to both variations of accessory liability, i.e. 'procurement' and 'common design'.

The trial judge had made no findings that the Ahmeds knew or should have known that there was a likelihood of confusion between Lifestyle's trademarks and the companies' products. Nor had the judge found that the Ahmeds knew that the reputation of Lifestyle's trademarks would be adversely affected by the companies' use of similar logos. In the circumstances, Lord Leggatt held that Lifestyle's claim against the Ahmeds failed, because the Ahmeds were not proved to have the requisite knowledge for accessory liability.[11]

Conclusion

Lifestyle Equities casts – or recognises the existence of – a wide net over directors in terms of their potential accessory liability for procuring or assisting their companies to commit tortious acts. Lord Leggatt's judgment highlights that there are no special rules or exceptions for directors in this area, and that the court would simply apply the ordinary principles of tort liability (and, in particular, principles of accessory liability).

However, Lifestyle Equities is unlikely to be the last word on this topic. For one, the knowledge requirement – i.e. that the accessory must know the "essential facts" which make the act wrongful – will need to be explored and refined in subsequent cases. Further, it is debatable whether Lifestyle Equities has cast too wide a net over company directors, such that directors could be inhibited from making robust commercial decisions that would otherwise be in their companies' best interests due to fear of incurring personal liability.[12] It is not inconceivable that the matter could be revisited by the Supreme Court in the not-too-distant future.

10 [131]; see also [108], [137]
11 [138]-[141]
12 cf PT Sandipala Arthaputra v STMicroelectronics Asia Pacific Pte Ltd [2018] SGCA 17, [68] (in relation to procurement of breach of contract); MCA Records Inc v Charly Records Ltd [2001] EWCA Civ 1441, [47]-[49].