

Richard Midgley from Moray Agnew provided details of a recent court decision.

There has been an interesting recent Victorian decision against accountants which considered the respective responsibilities of management of a company and the accountants when apportioning loss between them.

In the case, the plaintiffs were shareholders of a transport company ('the company') which went into liquidation. The plaintiffs had provided financial assistance and support to the company. The plaintiffs sued their accountants who had acted for many years on their behalf. The accountants had regularly attended board meetings of the company.

The allegations included alleged negligence of the accountants in the provision of advice concerning the financial position of the company which was relevant to ongoing financial assistance being provided to the company by the plaintiffs. During the period of about 12 months prior to the company's demise, the managing director of the company had provided misleading and inaccurate reports on the financial position of the company which had painted a picture of profitability when that was not the case. Whilst the accountant had asked the management of the company to provide more particular financial information, those requests were not met. Shortly prior to the collapse of the company, the accountant made a detailed request in writing for such information which led to the true financial position of the company being exposed.

The court held that the accountant had breached his duty by failing to act sooner in making a detailed written request for the information or advising the plaintiffs to cease further financial assistance to the company. Alternatively, the accountant should have resigned. The court determined that had these things been done sooner, then one of the plaintiffs would not have suffered loss in the amount of approximately \$430,000.

Having accepted the managing director was a 'concurrent wrongdoer', the court in apportioning the loss between the accountant and managing director, cited the High Court decision of *Podrebersek v Australian Iron & Steel Pty Ltd* :

'[t]he making of an apportionment ... involves comparison of culpability, ie. of the degree of departure from the standard of care of the reasonable man ... and of the relative importance of the acts of the parties in causing the damage ...'.

It was noted that the task involved matters of proportion, balance and relative emphasis on which there may well be differences of opinion by different minds.

On the facts, because the managing director of the company was actively engaged in the acts which caused the loss and had a direct personal interest in the company, the judge considered the managing director's culpability was much greater than that of the accountant. Insofar as the relative importance of the acts were concerned, this was acknowledged as a difficult question given the roles of the managing director and those of the accountants were fundamentally different. Because the accountant's position by attending board meetings was to advise and warn the plaintiffs when necessary, the relative importance of the respective acts of the accountant and the managing director were closer than with regard to their relative culpabilities.

The court concluded the accountant ought to be held liable for only 30% of the loss.

Conclusion

The case reveals that the court is prepared, in appropriate circumstances, to heavily reduce an accountant's responsibility for loss in circumstances where key financial information which caused the loss was negligently, or perhaps deliberately, provided by the management of a company. It also reinforces the position that an assessment of responsibility turns upon factual matters, particularly related to the respective roles of the parties, their culpability and the relative importance of their acts in causing the loss.

It should, however, be remembered that despite apportionment in favour of a defendant, a defendant may still be exposed to the full extent of a plaintiff's costs.

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