Alberta Court of Appeal Confirms Directors Can Be Personally Liable for Workplace Injuries

November 01, 2019

The workers' compensation scheme is designed to provide no-fault compensation to injured workers. Under the workers' compensation scheme, however, workers lose their cause of action against their employer as well as other parties who may have been responsible for the workers' injuries suffered in the course of employment. Despite this, the Alberta Court of Appeal recently confirmed that a director can be personally liable for a workplace accident that resulted in an injury to a worker.

Facts

In *Hall v. Stewart*[1] the defendant was a director of a company called DWS Construction Ltd. (DWS). DWS was retained as a subcontractor to complete work on the construction of a new home. Part of the scope of DWS' work was to install a temporary staircase into the basement of the home. The director of DWS was involved in the work on site. During the construction of the home, the staircase collapsed which resulted in injuries to the workers of another subcontractor. The injured workers were compensated by the Workers' Compensation Board (the Board). The Board then brought a subrogated action against the director of DWS seeking to recover the amounts the Board had paid to the workers.

DWS was an "employer" for the purposes of the *Workers' Compensation Act* (*Act)* and it had workers' compensation coverage. As DWS was an "employer", DWS and its employees were immune from any claims related to the injuries suffered by the injured workers. Under the *Act,* however, immunity does not apply to the directors of "employers", unless the directors purchase additional coverage. In this case, while the director of DWS had not purchased additional coverage, the director argued that he was immune from liability as any negligent act that was committed by him was within the scope of his duties as an employee of DWS, not as a director.

The Alberta Court of Appeal held that because he was a director of DWS and he participated in the installation of the staircase, he was not covered under the *Act*. The Court of Appeal then identified factors to consider when determining whether a director may be personally liable, which include:

- Whether the negligent act was committed while engaged in the business of the corporation;
- Whether the individual was pursuing any personal interest;
- Whether the director owed a separate and distinct duty of care;
- Whether the conduct was "in the best interests of the company";
- Whether the plaintiff was voluntarily dealing with the corporation or had the corporate relationship imposed on them;
- Whether the tort was "independent";
- The nature of the tort, including whether the tort was intentional; and
- Whether the damage was physical or economic.

In this case, the deciding factor was the nature of the damage: personal injury. The Court of Appeal noted that there have been a number of cases where directors (or other individuals) were personally liable for personal injuries. The Court stated that there was clearly a "duty of care" to avoid injuring co-workers. While the director's actions were not independent of DWS, there was a strong public policy reason to ensure that physically injured plaintiffs are compensated. Further, it followed that the director could not escape personal liability for any personal injuries caused to the workers as a result of a negligent act, even though the director's involvement in the construction of the staircase was a part of the business of the corporation DWS.

Takeaway

This case should be a warning to directors of corporations that they may not be immune from liability for actions committed while engaged in the business of the corporation. In particular, directors may be personally liable for personal injuries caused to a worker if the director was involved in performing the work.

[1] *Hall v Stewart*, 2019 ABCA 98

By

Andrew Pozzobon

Expertise

Labour & Employment, Corporate Governance

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.