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Piercing the Corporate Veil - Directors can be held liable for employee dismissals

For many years, Directors have been able to conduct business under the protection offered by the separate corporate identities of companies given their limited liability (corporate veil).

However, in terms of recent case law, this is no longer so.

Directors are no longer shielded from personal liability by relying on the separate juristic personality of the company.

In certain circumstances, the corporate veil can be pierced and Directors held personally liable for not following correct labour practices.

In a previous article we discussed *the importance of having a Disciplinary Code and Procedure* in the workplace, in this article we explore some caselaw on how directors can be held liable where the correct labour processes were not followed in specific reference to employee dismissals.

What does 'lifting the corporate veil' mean?

Lifting or piercing the corporate veil refers to exceptional circumstances (due to fraud or improper conduct within the company) where the Court ignores the distinction between the company and the natural person behind it, stripping away the protective cover enjoyed by the company structure to prevent abuse by the Directors and Shareholders alike.

There are no specific guidelines as to when the Court can pierce the corporate veil as this depends solely on the facts of each case.

Caselaw: *Moloney and Others v 3D Design Close Corporation t/a Muga Design and Others (2023)*

In the recent case of *Moloney and Others v 3D Design Close Corporation t/a Muga Design and Others (2023),* the Labour Court had to decide when the corporate veil can be pierced to hold the Directors personally liable for the conduct of the company.

- The Applicants were verbally informed that the Respondents were undergoing voluntary liquidation and that their contracts of employment were being terminated with immediate effect. Shortly after the dismissals occurred, the Respondents registered two new entities under the 3D Design Group and transferred the remaining employees accordingly.
- The Applicants submitted that this was automatically an unfair dismissal in terms of section 187(1)(g) of the Labour Relations Act 66 of 1995 which prohibits any retrenchment or other dismissal relating to a takeover of an entity as a going concern (transfer).
- The Court found that the voluntary liquidation was merely a tactic of convenience for dismissing certain employees without repercussions and ruled that the dismissals were automatically unfair and detrimental to the Applicants' interests and rights. Further, employees were selected at random for the continued operation of the 3D Design Group, which selection was done by the Directors of the group personally.

The Court pierced the corporate veil and found the Directors personally liable for the maximum compensation of 24 months to the Applicants.

In conclusion

This judgement serves as a warning to *Directors to ensure their business is conducted in a proper manner* as the improper use of corporate identities can result in the corporate veil being pierced and Directors being held personally liable for their misconduct, in this case, specifically regarding labour practices.

SERR Synergy assist businesses with ensuring compliance with the relevant labour legislation of South Africa. It is important to understand the implications and liability as Directors as well as employees when following the relevant labour processes our law offers to ensure risk is mitigated and a fair procedure and outcome ensues. Make sure you don't miss our follow up article about Director dismissals.

About the Author: Kayla du Preez completed her LLB degree at the University of Stellenbosch in 2018 whereafter she completed her Articles of Clerkship in KZN. She joined our team in February 2022 and holds the title of Labour Legal Advisor.