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ONTARIO CONFIRMS THAT DIRECT PARTICIPATION IN CIVIL FRAUD IS AN INDEPENDENT GROUND FOR PERSONAL LIABILITY

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The Ontario Court of Appeal recently upheld the finding that Michael Caridi personally committed civil fraud by recklessly representing that Tree of Knowledge International Corp. ("TOKI") could supply three million NIOSH-certified N95 masks to a hospital.[1] The decision confirms that direct participation in civil fraud can independently ground an officer's or director's personal liability.

Factual Background

Early in the COVID-19 pandemic, CHU de Québec-Université Laval ("CHU") was in need of NIOSH-certified N95 masks ("N95 masks").[2] On March 26, 2020, Mr. Caridi agreed that TOKI would supply three million N95 masks by March 28, provided CHU issued a purchase order and paid in full.[3]

CHU paid TOKI US$13,693,522.50 before receiving any masks.[4] At the time of contracting, however, Mr. Caridi had not sourced the masks and had no agreement to purchase NIOSH-certified N95 masks.[5]

TOKI delivered a set of masks on April 9 and 13, 2020, that were labelled "KN95" and "Nonmedical use."[6] CHU tested these masks and found them effectively worthless for its purposes.[7] CHU sued TOKI, Mr. Caridi, and other defendants for recovery of its funds. The trial judge found TOKI liable for civil fraud and held Mr. Caridi personally liable for CHU's loss.[8]

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[1] *CHU de Québec-Université Laval v. Tree of Knowledge International Corp.*, 2026 ONCA 209.
[2] *Ibid* at para 1.
[3] *Ibid.*
[4] *Ibid* at para 27.
[5] *Ibid* at para 38.
[6] *Ibid* at paras 31-32.
[7] *Ibid.*
[8] *Ibid* at para 2.

Holding

The appeal, including the costs appeal, was dismissed.[9] The Court affirmed the findings of both civil fraud and personal liability.[10]

1. Civil Fraud and Recklessness

The Court of Appeal confirmed that civil fraud requires a false representation, knowledge of its falsity through knowledge or recklessness, reliance causing the plaintiff to act, and resulting loss.[11]

The Court held that Mr. Caridi acted recklessly because he represented that TOKI could obtain three million NIOSH-certified N95 masks when the proposed supplier had provided no assurance that it could deliver any such masks.[12] He continued making the representations without a factual basis or subjective belief in their truth.

2. Personal Liability of an Officer or Director

The Court of Appeal held that direct participation in fraud is an independent sufficient ground for a finding of personal liability.[13] Officers and directors may be personally liable where their conduct is independently tortious or demonstrates a separate identity or interest from that of the corporation.[14]

Accordingly, Mr. Caridi's personal involvement in making the fraudulent representations was sufficient to ground liability, without any need to separately establish that he acted outside his corporate role or for a distinct personal interest.[15] Mr. Caridi personally made the representations and was personally reckless as to their truth, even though he acted on behalf of TOKI.[16] The Court found that it did not need to decide broader questions concerning officer and director liability because his direct participation in the fraud provided a sufficient basis for liability.[17]

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[9] *Ibid* at para 4.
[10] *Ibid*.
[11] *Ibid* at para 70.
[12] *Ibid* at para 79.
[13] *Ibid* at para 95.
[14] *Ibid*.
[15] *Ibid* at paras 100-104.
[16] *Ibid*.
[17] *Ibid*.

Key Takeaways

- The threshold for recklessness is higher than mere negligence. It may be established where a person makes a material representation without an honest basis, disregards its truth, or deliberately fails to inquire into its accuracy.

- Corporate officers and directors may be personally liable for fraud when they directly make fraudulent representations.

- A corporation's separate legal personality does not shield an officer or director from liability for the officer's or director's own tortious conduct.

Direct participation in fraud is an independent basis for personal liability, including where the plaintiff's loss is purely economic.