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# No basis to pierce corporate veil in aborted real estate transaction (*Dawood v. Popes Property Holdings Inc)*

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In some real estate transactions, individuals may negotiate an agreement in which they do not wish to incur personal liability and may use a shell or holding company for that purpose. Even if the corporate vehicle is not immediately available, the parties may agree that once it is in place and it adopts the agreement, the individuals will have no remaining liability.

A consequence of such an agreement, however, is that a party may have no recourse against the individual(s) behind the corporation if the transaction goes awry, as demonstrated by the Ontario Superior Court of Justice in *Dawood v. Popes Property Holdings Inc.*, 2025 ONSC 2144 (CanLII).

The dispute at issue arose from a failed transaction involving a property in Kitchener, Ontario.

In March 2022, the plaintiff entered into an agreement of purchase and sale (APS) to sell the property for $880,000. The buyer then assigned the APS to a corporation, as was permitted by the APS. However, the corporation did not complete the transaction.

The plaintiff re-listed and sold the property for $710,000. He sued the defendant corporation for losses of $224,610.85 and included the sole director/owner of the corporation as a defendant. The plaintiff sought to affix personal liability on the individual for the failure of the corporation to complete the transaction. The original buyer was not a party to the action.

The plaintiff brought a summary judgment motion against the two defendants. The defendants did not oppose the motion against the corporation and there was no dispute that the corporation was liable to the plaintiff for damages for breaching the APS in the amount of $224,610.85.

The issue in dispute was the liability of the individual defendant. The defendants brought a cross-motion for reverse summary judgment to dismiss the claim against him.

The individual defendant was the sole director, officer and shareholder of the

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corporation, which was not incorporated until 12 days after the assignment of the APS. He paid the deposit and signed the assignment agreement on behalf of the as-yet-to-be-incorporated buyer.

There was no dispute that the original buyer had the right to assign the APS, and that the plaintiff understood that the assignment was intended to go to the defendant corporation upon its incorporation. The APS provided that the buyer shall be released from all obligations and liabilities thereunder so long as they were assumed by the entity to whom the APS was assigned.

The defendants' position was that the corporation had adopted the APS in accordance with section 21 of Ontario's *Business Corporations Act* (OBCA), at which time the individual defendant ceased to be liable thereunder.

Section 21 of the OBCA provides in part that a corporation may, within a reasonable time after it comes into existence, adopt a contract made before it came into existence in its name or on its behalf. The statute does not set out the "manner of adoption," and there are stringent requirements of formality: *Sherwood Design Services Inc. v. 872935 Ontario Ltd.*, 1998 CanLII 3116 (ON CA).

The motion judge referred to *Jonathan's – Aluminum. v. Retail*, 2015 ONSC 6485, at paragraph. 50, where the court held that factors favouring the adoption of a contract by a corporation under section 21(b) of the OBCA include the following:

a. The contract stated that the individual was signing for a corporation;
b. The incorporation happened within a short time of the contract being signed;
c. The plaintiff was immediately notified;
d. Both parties were aware of the individual's intention to sign on behalf of the corporation; and
e. All relevant information and forms were in the name of or addressed to the corporation.

In the case at hand, the defendant corporation was incorporated for the purpose of adopting the APS and it was named as the assignee. While the original buyer was not a party to the action and provided no evidence, the plaintiff agreed that it was aware of the buyer's intention to assign the APS to the corporation. The motion judge found that it was apparent that the plaintiff did in fact have notice that the corporation was the intended assignee even though there was no requirement of notice.

The parties agreed that by operation of section 21 of the OBCA, the assignment from the individual to the corporation was valid, despite the fact that the corporation was not incorporated until after the assignment. The motion judge found that the totality of the facts disclosed sufficiently that the corporation adopted the APS.

The plaintiff argued that the fact that the individual defendant personally signed the assignment, prior to the incorporation of the corporation, and that he likely personally provided the $5,000 deposit, were two factors to be considered in determining whether he should be held personally liable. Since the individual was the only officer and director of the corporation, and therefore personally made all of the decisions, he should be personally liable for the failure of the corporation to complete the transaction. In this regard, the plaintiff was essentially arguing that the court should pierce the corporate veil.

The motion judge found that this was not a case where the facts could support piercing of the corporate veil as the corporation had



not been used as a "shield" for fraudulent or improper conduct, referring to *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.*, 1996 CanLII 7979 (ON SC), aff'd [1997] O.J. No. 3754 (C.A).

The fact that a director or officer decided, in their capacity, that a corporation should breach a contract, did not amount to the type of improper conduct that justified piercing the corporate veil, at least where the director or officer could not be sued for the tort of inducing breach of contract: *FNF Enterprises Inc. v. Wag and Train Inc.*, 2023 ONCA 92, 165 O.R. (3d) 401, at para. 24.

In the motion judge's view, the fact that the individual defendant signed the assignment agreement on behalf of the corporation, and/or that he provided the $5,000 deposit personally, did not alter this assessment. It was self-evident that the individual defendant would have to sign all documentation on behalf of a corporation for which he was the sole director and officer. The wording in the APS between the plaintiff and the original buyer regarding assignment allowed for the possibility that the APS could be assigned to a shell corporation with no assets. The claim against the individual defendant was therefore dismissed.

At the end of the day, this was the exact scenario anticipated by section 21 of the OBCA. In the circumstances, there was no fraud or improper conduct on the part of the individual sufficient to vest him with personal liability. The corporation was not incorporated to be used as a shield for improper conduct. The plaintiff's recourse will accordingly be limited to enforcing the judgment against the corporation, rather than the individual owner or director thereof. A party wishing to avoid this result may wish to take steps to ensure that the owner of a shell corporation agrees to remain personally liable.

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If you have a litigation matter and are in need of legal advice, please contact James Cook, at 416.865.6628 or jcook@grllp.com.

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