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Directors - Careful What You Sign

The Court of Appeal recently handed down a decision which should convince directors to take great care when they sign contractual documents on behalf of their companies because if the contract contains a misrepresentation, they can in some circumstances be held personally liable for it by the courts. The fact that the contract may not benefit the director is not a defence.

In the case in point, a company entered into a contract to pay for goods it then received. A director of the company signed the contract knowing that the company was insolvent and would be unable to pay for the goods.

The Court of Appeal ruled that the director had made an implied misrepresentation to the supplier. Since he knew the goods would not be paid for, the Court found him personally liable for the sum owed, on account of his deceit.

The message for directors is to be careful what you sign. 'Limited liability' may not be limited if the court decides that the director knew that the company could not meet its obligations. This could apply in a variety of instances, for example where the company enters into a long-term agreement such as a lease of new premises.

Says Kamlesh Chandarana, “The Companies Act 2006 places a statutory burden on directors to adhere to certain standards and consider specifically the effects of their decisions in various ways. A part-time, non-executive or even ‘shadow’ director (one who has no official position in the company but whose decisions are normally followed) can be in the firing line when things go wrong just as surely as can the full-time working directors.”